

1066

No. 2529

United States
Circuit Court of Appeals,
For the Ninth Circuit. 1066

R. C. WOOD, JOHN L. MCGINN and J. A. JES-
SON,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-
ALASKA BANK, a Corporation, Organized
Under the Laws of the State of Nevada,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Alaska, Fourth Division.

Filed

AUG 12 1915

F. D. Monckton,

Clerk.

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For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within

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*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 1761.

F. G. NOYES, as Receiver of the Washington-Alaska Bank, a Corporation, Organized under the Laws of the State of Nevada,

Plaintiff and Appellee,

vs.

JOHN ZUG, JAS. W. HILL, JOHN L. MCGINN, DAVE YARNELL, DAVID PETREE, L. T. ERWIN, R. C. WOOD, G. A. COLEMAN, JESSON BROTHERS, a Copartnership Composed of L. N. JESSON, J. A. JESSON and E. R. JESSON; also, L. N. JESSON, J. A. JESSON and E. R. JESSON, as Individuals; J. L. SALE, A. T. SMITH, J. A. HEALEY, G. W. PALMER, Mrs MARY ANDERSON, MARGARET HALLY, S. DOCKHAM, M. F. HALL, VIOLET GAUSTAD, Mrs. ANNA C. SULLIVAN, JOHN ANDERSON, JOHN E. HOLMGREN, JOHN FLYGAR, B. R. DUSENBURY, ANNIE B. CLAYPOOL, S. E. & ROBERT SHEPHARD, Copartners Doing Business as SHEPHARD BROS., H. G. C. BALDRY, JOHN PARONS, LUCY PARONS, W. E. BALDRY, CHAS. FREY, PAUL FISHER, HANS STARK, GEO. PRESTON, DAN RYAN, SUSIE KOTZCH and CLARA MARKS,

Defendants and Appellants.

Names and Addresses of Attorneys of Record.

O. L. RIDER, Venita, Oklahoma,

R. F. ROTH, Fairbanks, Alaska,

Attorneys for Plaintiff and Appellee.

McGOWAN & CLARK, Fairbanks, Alaska,

A. R. HEILIG, Fairbanks, Alaska,

JOHN L. MCGINN, Keystone Apartments, San
Francisco, Calif.,

Attorneys for Defendants and Appellants.

[1*]

[Title of Court and Cause.]

Praeipce.

To the Clerk of the Above-Entitled Court:

You are hereby directed to make and prepare the record on appeal in the above-entitled cause, and have the same in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, by the 1st day of January, 1915; and that, in preparing said transcript, it shall be made up of the following papers:

Complaint;

Amended Answer of J. A. Jesson, John L. McGinn
and R. C. Wood;

Reply to said Answer;

Findings of Fact and Conclusions of Law;

Judgment and Decree;

Bill of Exceptions;

Order Settling Bill of Exceptions;

*Page-number appearing at foot of page of Original Certified Transcript of Record.

Assignments of Error;
Petition for Appeal;
Order Allowing Appeal;
Bonds on Appeal;
Citation, and Admission of Service Thereon;
Stipulating Extending the Return Day and Time
for Docketing Said Cause on Appeal; [2]
Order Extending Return Day and Time for Docket-
ing Said Cause on Appeal;
Stipulation for Printing Transcript;
Stipulation as to Record on Appeal;
Praecipe for Transcript; and
Stipulation as to Making Up of Record.

McGOWAN & CLARK,

A. R. HEILIG,

JOHN L. McGINN,

Attorneys for Defendants Wood, McGinn and J. A.
Jesson.

[Endorsed]: Filed in the District Court, Terri-
tory of Alaska, 4th Div. Sep. 19, 1914. Angus Mc-
Bride, Clerk. By P. R. Wagner, Deputy. [3]

[Title of Court and Cause.]

Complaint.

Plaintiff complains of defendants and for cause of
action alleges:

I.

The Washington-Alaska Bank is, and ever since
the 21st day of January, 1908, has been a corporation
duly organized and existing under and by virtue of
the laws of the State of Nevada. Said Washington-

Alaska Bank was originally incorporated under the corporate name of "The Fairbanks Banking Company," but afterward, on or about, or shortly prior to, the 14th day of September, 1910, its name was by amendments to its Articles of Incorporation duly changed to "Washington-Alaska Bank." The authorized capital stock of plaintiff corporation is and was at all times since its incorporation \$300,000.00, divided into 3000 shares of the par value of \$100 each.

II.

On and for a long time prior to the 12th day of April, 1910, the said Washington-Alaska Bank, then, however, under the name of the Fairbanks Banking Company, was engaged in the general business of banking at the city of Fairbanks, Territory of Alaska, and [4] as a part of its business had been accepting and receiving deposits from the public generally and said Washington-Alaska Bank did thereafter and continuously until and including the 4th day of January, 1911, continue to conduct and carry on said business of banking at said city of Fairbanks, Territory of Alaska, and to so accept and receive deposits from the public generally.

III.

On the said 12th day of April, 1910, the outstanding issued capital stock of the said Washington-Alaska Bank, then known as the Fairbanks Banking Company was 1686 shares, and the defendants above named were, on said 12th day of April, 1910, stockholders therein as follows:

John Zug	was the owner of	10	shares.
Jas. W. Hill	“ “ “ “	100	“
John L. McGinn	“ “ “ “	100	“
Dave Yarnell	“ “ “ “	50	“
David Petree	“ “ “ “	10	“
L. T. Erwin	“ “ “ “	11	“
R. C. Wood	“ “ “ “	25	“
G. A. Coleman	“ “ “ “	10	“
L. N. Jesson	“ “ “ “	100	“
J. A. Jesson	“ “ “ “	100	“
E. R. Jesson	“ “ “ “	100	“
J. L. Sale	“ “ “ “	10	“
A. T. Smith	“ “ “ “	5	“
J. A. Healey	“ “ “ “	5	“
G. W. Palmer	“ “ “ “	2	“
Mrs. Mary Anderson	“ “ “ “	10	“
Margaret Hally	“ “ “ “	10	“
S. Dockham	“ “ “ “	2	“
M. F. Hall	“ “ “ “	5	“
Violet Gaustad	“ “ “ “	5	“
Mrs. Anna C. Sullivan	“ “ “ “	50	“
John P. Anderson	“ “ “ “	25	“
John E. Holmgren	“ “ “ “	10	“
John Flygar	“ “ “ “	25	“
B. R. Dusenbury	“ “ “ “	35	“
Annie Claypool	“ “ “ “	10	“
S. E. & Robert Shephard	“ “ “ “	50	“
H. G. C. Baldry	“ “ “ “	80	“
John Parsons	“ “ “ “	5	“
Lucy Parsons	“ “ “ “	5	“
W. E. Baldry	“ “ “ “	2	“
Chas. Frey	“ “ “ “	20	“

Paul Fisher	“	“	“	“	25	“
Hans Stark	“	“	“	“	25	“
Geo. Preston	“	“	“	“	5	“
Dan Ryan	“	“	“	“	25	“
Susie Kotsch	“	“	“	“	10	“
Clara Marks	“	“	“	“	10	“

[5]

IV.

On and for a long time prior to said April 12th, 1910, said Washington-Alaska Bank, then known as the Fairbanks Banking Company, was in a grossly insolvent and bankrupt condition and its assets were insufficient in value by more than \$100,000.00 to pay its deposits and other liabilities. Notwithstanding the said grossly insolvent and bankrupt condition of said bank, the Board of Directors thereof did on said 12th day of April, 1910, wrongfully and fraudulently declare and order to be paid to the then stockholders of said Washington-Alaska Bank, then known as the Fairbanks Banking Company, a dividend of twenty per cent or twenty dollars per share, on its then outstanding capital stock of \$168,800.00. On said 12th day of April, 1910, said Washington-Alaska Bank owed to depositors the sum of \$876,972.28 and had other liabilities amounting to \$83,717.53.

V.

Said dividend was on or about April 14th, 1910, actually paid to and received by the defendants in manner and amount as follows:

To the defendant Jas. W. Hill, in cash.....	\$2600.00
To the defendant John L. McGinn, in cash.....	2000.00
To the defendant Dave Yarnell, in cash.....	1000.00
To the defendant L. T. Erwin, in cash.....	220.00
To the defendant R. C. Wood, in cash.....	500.00

To the defendants L. N. Jesson, J. A. Jesson and E. R. Jesson, the sum of \$2000.00 each, all of which sums amounting in all to \$6000.00 was paid to and received by the defendants Jesson Brothers, a copartnership, in cash.

To the defendant J. L. Sale, in cash.....	200.00
A. T. Smith, in cash.....	100.00
J. A. Healey, in cash.....	100.00
G. W. Palmer, in cash.....	40.00
Mrs. Mary Anderson, in cash.....	200.00
Margaret Hally, in cash.....	200.00
S. Dockham, in cash.....	40.00
M. F. Hall, in cash.....	100.00
Violet Gaustad, in cash.....	100.00
Mrs. Anna C. Sullivan, in cash.....	1000.00
John P. Anderson, in cash.....	500.00
John F. Holmgren, in cash.....	200.00
John Flygar, in cash.....	500.00
B. R. Dusenbury, in cash.....	700.00
Annie B. Claypool, in cash.....	200.00

[6]

To the defendants S. E. and Robert Shephard, co-partners as Shephard Brothers, in cash.....	1000.00
To the defendant H. G. C. Baldry, in cash.....	1600.00
To the defendant John Parsons, in cash.....	100.00
To the defendant Lucy Parsons, in cash.....	100.00
To the defendant W. E. Baldry, in cash.....	40.00
To the defendant Chas, Frey, in cash.....	400.00
To the defendant Paul Fisher, in cash.....	500.00
To the defendant Hans Stark, in cash.....	500.00
To the defendant Geo. Preston, in cash.....	100.00
To the defendant Dan Ryan, in cash.....	500.00
To the defendant Susie Kotsch, in cash.....	200.00
To the defendant Clara Marks, in cash.....	200.00

To the defendant John Zug, by crediting the sum of \$200 being the amount of the said dividend payable to him, as a partial payment on a certain promissory note of said John Zug then held by said Washington-Alaska Bank, which said promissory note was afterwards, prior to January 4th, 1911, paid by said John Zug, and said note surrendered to him as fully paid.

To the defendant G. A. Coleman, by crediting the sum of \$200.00, being the amount of said dividend payable to him, as a partial payment on a certain promissory note of said G. A. Coleman, then held by said Washington-Alaska Bank, the balance of which said note was afterwards, prior to January 4th, 1911, paid by said G. A. Coleman and said note surrendered to him as fully paid.

To the defendant David Petree, by crediting the sum of \$200.00, being the amount of said dividend payable to him, as a partial payment on a certain promissory note of said David Petree then held by said Washington-Alaska Bank, the balance of which said note was afterwards, and prior to January 4th, 1911, paid by said David Petree and said note surrendered to him as fully paid.

VI.

After said 12th day of April, 1910, although said Washington-Alaska Bank, then known as the Fairbanks Banking Company, was at all times insolvent and in a failing condition, said bank nevertheless continued actively in business as a bank at said city of Fairbanks and to receive deposits from the public generally until and including January 4th, 1911, and

thereafter on January 5th, 1911, in a certain suit entitled "Tanana Valley Railroad Company, a corporation, and John Zug, plaintiffs, vs. Washington-Alaska Bank, a corporation, defendant," commenced in said District Court, Territory of Alaska, Fourth Division, an order was duly given and made appointing F. W. Hawkins receiver of said Washington-Alaska Bank, who thereupon duly qualified and entered upon his duties as such receiver. Thereafter, on the 6th day of January, 1911, said [7] District Court by an order duly given and made appointed E. H. Mack, jointly with said Hawkins, receiver of said Washington-Alaska Bank, and said Mack thereupon duly qualified and entered upon his duties as such receiver; and thereafter said Hawkins and Mack continued to be and act as receivers of said Washington-Alaska Bank until the 12th day of May, 1911, when said Hawkins and Mack resigned as such receivers, and thereupon on said date last named said District Court, by an order duly given and made and entered, appointed the plaintiff, F. G. Noyes, receiver of said Washington-Alaska Bank, and said F. G. Noyes thereupon duly qualified as such receiver, and ever since has been, and now is the duly qualified and acting receiver of the said Washington-Alaska Bank, and as such is plaintiff in this suit.

VII.

On the date and at the time said Washington-Alaska Bank ceased business on January 4th, 1911, said Washington-Alaska Bank had liabilities in excess of \$1,037,296.13 consisting of amounts due depositors, other than banks, of \$921,357.56, and

amounts due banks in excess of \$115,938.77, and the assets of said Washington-Alaska Bank were then and still are insufficient by more than the sum of \$200,000.00 to pay said liabilities in full.

VIII.

By reason of the defendants herein being so numerous, to prosecute a separate action at law against each of said defendants for the amount of the dividend received by them respectively, would cause a great multiplicity of suits and great and unnecessary expense and furthermore the trial of the issues involved herein will involve the examination into many complicated accounts, which can only properly be done in a court of equity, therefore plaintiff alleges that he has in the premises no plain, speedy or adequate remedy at law, and therefore invokes the aid of a court of equity where matters of this kind are [8] properly cognizable and relievable.

IX.

The defendants L. N. Jesson, J. A. Jesson and E. R. Jesson, are and were at all times herein mentioned copartners engaged in business under the firm name of Jesson Brothers, and the defendants S. E. and Robert Shephard are and were at all times herein mentioned copartners engaged in business as Shephard Brothers.

WHEREFORE, Plaintiff prays for judgment against the defendants as follows:—

Against the defendant John Zug for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant G. A. Coleman for the sum

of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant David Petree for the sum of \$200.00, together with interest thereon from April 14th, 1900, at the rate of 8% per annum;

Against the defendant Jas. W. Hill for the sum of \$2600.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant John L. McGinn for the sum of \$2000.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Dave Yarnell for the sum of \$1000.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant L. T. Erwin for the sum of \$220.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant R. C. Wood for the sum of \$500.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendants Jesson Brothers, a co-partnership, composed of L. N. Jesson, J. A. Jesson, and E. R. Jesson, and against said L. N. Jesson, J. A. Jesson and E. R. Jesson, each individually, for the sum of \$6000, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant J. L. Sale for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant A. T. Smith for the sum of \$100.00, [9] together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant J. A. Healey for the sum of \$100.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant G. W. Palmer for the sum of \$40.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Mrs. Mary Anderson for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Margaret Hally for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant S. Dockham for the sum of \$40.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant M. F. Hall for the sum of \$100.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Violet Gaustad for the sum of \$100.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Mrs. Anna C. Sullivan for the sum of \$1000.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant John P. Anderson for the sum of \$500.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant John E. Holmgren for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant John Flygar for the sum of \$500.00, together with interest thereon from April

14th, 1910, at the rate of 8% per annum;

Against the defendant B. R. Dusenbury for the sum of \$700.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Annie B. Claypool for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendants S. E. and Robert Shephard, copartners as Shephard Brothers, for the sum of \$1000.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant H. G. C. Baldry for the sum of \$1600.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum; [10]

Against the defendant John Parsons for the sum of \$100.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Lucy Parsons for the sum of \$100.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant W. E. Baldry for the sum of \$40.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Chas. Frey for the sum of \$400.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Paul Fisher for the sum of \$500.00, together with interest thereon from August 14th, 1910, at the rate of 8% per annum;

Against the defendant Hans Stark for the sum of \$500.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Geo. Preston for the sum of \$100.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Dan Ryan for the sum of \$500.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Susie Kotsch for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

Against the defendant Clara Marks for the sum of \$200.00, together with interest thereon from April 14th, 1910, at the rate of 8% per annum;

PLAINTIFF ALSO PRAYS for all other and further relief to which he may be in equity entitled, including costs of suit.

IRA D. ORTON,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing complaint; I have read said complaint, know the contents thereof, and believe [11] the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 13th day of April, A. D. 1912.

RICHARD H. GEOGHEGAN,
Notary Public in and for the Territory of Alaska.

[Endorsed]: No. 1761. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes as Receiver of Washington-Alaska Bank, a Corporation, Plaintiff, vs. John Zug et al., Defend-

ants. Complaint. Filed in the District Court, Territory of Alaska, 4th Div. April 13, 1912. C. C. Page, Clerk, by G. F. Gates, Deputy. [12]

[Title of Court and Cause.]

Amended Answer.

Come now the defendants John A. Jesson, M. F. Hall, David Petree, John L. McGinn, R. C. Wood, James W. Hill, E. R. Jesson, Mrs. Mary Anderson, John Zug, John A. Healey and John L. Sale, and, by leave of the Court first had and obtained, file this their Amended Answer to plaintiff's complaint on file in the above-entitled action, and admit, deny and allege as follows, to wit:

I.

Admit the allegations of paragraph I and paragraph 2 of said complaint.

II.

These defendants, other than R. C. Wood, admit that they were the owners of the number of shares of capital stock of the Fairbanks Banking Company, a corporation, set opposite their respective names in said paragraph; and, as to the other matters contained in said paragraph 3, they say that they have no knowledge or information sufficient to form a belief, and therefore deny the same.

III.

Answering paragraph 4 of said complaint, these defendants admit that the board of directors on the 12th day of April, 1910, declared and ordered to be paid a dividend of twenty dollars per share of its then outstanding capital stock; and deny each and every

other allegation contained therein.

IV.

Answering paragraph 5, these defendants, save and except [13] the defendants R. C. Wood, John A. Jesson and James W. Hill, admit that they received the amount of the dividend as set forth in said paragraph; and, as to the other allegations, matters, and things therein contained, all the answering defendants deny any knowledge or information sufficient to form a belief.

And the said Wood denies that he received any dividend for or on account of any stock.

And the said E. R. Jesson and John A. Jesson deny that said John A. Jesson is or was a member of the firm of Jesson Brothers, and that said firm consists of W. R. Jesson, L. N. Jesson and John A. Jesson.

And said John A. Jesson denies that said money so declared as a dividend on his stock was paid to Jesson Brothers, save and except that he admits that said money was paid to Jesson Brothers in payment of indebtedness owing by him to Jesson Brothers, and for his own private account.

And defendant Hill denies that any part of portion of said dividend was paid to him; and alleges that he had no knowledge thereof; and denies that he ever received any of said money so declared as a dividend on his stock.

V.

Answering paragraph 6, these defendants deny that said bank was on the 12th day of April, 1910, and at all times thereafter, insolvent and in a failing

condition; but admit the institution of an action by the Tanana Valley Railroad Company and John Zug, plaintiffs, vs. the Washington-Alaska Bank, a corporation, defendant, and the appointment of F. W. Hawkins and E. H. Mack as receivers and the qualification of said receivers, as alleged in said paragraph 6; and, as to the other matters and things in said paragraph contained, these answering defendants allege that they have no knowledge or information thereof sufficient to form a belief, and therefore deny the same. [14]

VI.

As to the matters and things set forth in paragraph 7 of said complaint, these answering defendants have no knowledge or information sufficient to form a belief, and therefore deny the same.

VII.

Answering paragraph 8 of said complaint, these defendants deny each and every allegation therein contained.

VIII.

Answering paragraph 9 of said complaint, these defendants John A. Jesson and E. R. Jesson deny that at all times mentioned in the complaint they were engaged in business under the firm name and style of Jesson Brothers, or otherwise.

These defendants, with the exception of Hill, Wood and John A. Jesson, for a further and separate answer and defense, allege:

I.

That defendants E. R. Jesson, M. F. Hall, David Petree, Mary Anderson, John Zug and John L. Sale

were at none of the times mentioned in the complaint officers or directors of said Fairbanks Banking Company, later known as the Washington-Alaska Bank.

II.

That the defendant James W. Hill was not a director of said bank after the middle of September, 1909.

III.

That the defendant Healey was not a director of said bank until the month of June, 1910.

IV.

That on or subsequent to the 15th day of April, 1910, these defendants received from said bank a dividend in the amount set opposite their respective names as in the complaint alleged;

That at the time said dividend was declared and at the [15] time they received the same, the said bank was solvent, and the defendants believed it so to be, and received said dividend in good faith relying on the officers of said bank, and believed that the dividend paid to them came out of the profits of said bank and not otherwise.

The defendant Wood, for a further and separate answer, alleges:

I.

That the dividend declared and paid to him by the Fairbanks Banking Company was paid to him for the use and benefit of Joseph Conta, who was the true owner of said shares of stock standing in the name of the said Wood; and that at the time said dividend was declared, and at the time he received the same, said bank was solvent and the defendant Wood be-

lieved it so to be and received said dividend in good faith and in the honest belief that said bank was solvent; that said Wood paid to said Conta the amount of said dividend so received by him, prior to any notice that said bank was insolvent and could not meet its liabilities.

And the defendant Hill, for a further and separate answer, alleges:

I.

That he never received any dividend from the Fairbanks Banking Company for or on account of any stock owned by him in said corporation.

II.

That at the time of the declaration of said dividend, he was not within the District of Alaska, and the amount of the dividend that he was entitled to receive upon his stock was, without his knowledge or consent, paid to E. T. Barnette. [16]

III.

That the said Hill never had any notice that said dividend was declared, until after the suspension of said bank.

IV.

That at the time of the declaration of said dividend, the stock of the said Hill was pledged to E. T. Barnette, and the same remained upon the books of said bank in the name of the said Hill.

V.

That at the time the said dividend was received by the said E. T. Barnette, the debt due the said E. T. Barnette, to secure which said stock was pledged, was not due; That the said Fairbanks Banking Com-

pany, without authority from said Hill, paid said dividend to said E. T. Barnette.

VI.

That at the time of the declaration of said dividend, the said Hill was not an officer or director of said Fairbanks Banking Company nor had he been an officer or director thereof subsequent to the 15th day of September, 1909.

VII.

That at the time said bank paid said dividend to said E. T. Barnette, the said bank was solvent, and the said E. T. Barnette believed it to be so and received said dividend in the honest belief that said bank was solvent.

The defendant John A. Jesson, for a further and separate answer alleges:

I.

That at the time said dividend was declared, he was indebted to Jesson Brothers, consisting of E. R. Jesson, and L. N. Jesson, and that said Fairbanks Banking Company paid the amount declared as a dividend on the stock owned by said John A. Jesson to E. R. Jesson and L. N. Jesson. [17]

II.

That at the time said dividend was declared, said John A. Jesson believed that said bank was solvent; and said dividend was paid to Jesson Brothers on indebtedness owing to them by this answering defendant, in good faith; and this defendant believed that the dividend so paid came from the profits of said bank, and not otherwise; and alleges that said

bank was solvent at the time said dividend was declared.

The defendants, for a further and separate defence to the plaintiff's complaint, allege:

I.

That upon the 12th day of April, 1910, at a meeting of the board of directors at which the dividend was declared by the Fairbanks Banking Company which is complained of in the complaint, the directors present at said meeting of the board of directors were: E. T. Barnette, Ray Brumbaugh, John A. Jesson, R. C. Wood, John L. McGinn, J. A. Jackson, and David Yarnell.

II.

That the name of said Fairbanks Company was, in the month of October, 1910, changed to the name of Washington-Alaska Bank of Nevada.

III.

That upon the 4th day of January, 1911, said Washington-Alaska Bank closed its doors and suspended business, and immediately thereafter F. W. Hawkins and E. H. Mack were appointed receivers by this Court to take care of and administer the estate of said bank, and they immediately entered upon the performance of their duties as such.

IV.

That in the month of March, 1911, the then receivers of the Washington-Alaska Bank, formerly Fairbanks Banking Company, [18] intended to bring a suit or action in the District Court for the Territory of Alaska Fourth Division against E. T. Barnette, who had been the president of said Fairbanks

Banking Company, and a director thereof, from the time of its organization as a corporation on March 12, 1908, until it closed its doors on January 4, 1911, and as such was active and influential in the management and control of said Fairbanks Banking Company.

V.

That at the time of the suspension of said bank, said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said Washington-Alaska Bank and with the then receivers of said bank for the purpose of amicably adjusting all suits and causes of action that might exist against the said E. T. Barnette on account of his liability to the creditors of said bank on account of his management thereof from the time of its organization on the 12th day of March, 1908, until the 4th day of January, 1911.

VI.

That as a result of said negotiations, and in full satisfaction of all liability of the said E. T. Barnette to the creditors of said Washington- Alaska Bank for and on account of the acts and wrongs done by him, if any, during said time that he was president and director thereof, the said E. T. Barnette and Isabelle Barnette his wife executed an instrument in writing in which the said E. T. Barnette admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all of the depositors and holders of unpaid drafts of said bank in full any de-

ficiency that might be found to exist upon the 18th day of November, 1914, between the amounts due said depositors [19] and holders of unpaid drafts on the 4th day of January, 1911, with interest thereon at the rate of 6 per cent per annum from said January 4th, 1911 until the same should be paid, and the amount realized out of the property and assets of said Washington-Alaska Bank and paid to said depositors and holders of unpaid drafts.

VII.

That said Isabelle Barnette was and is the wife of said E. T. Barnette, and the said Isabelle Barnette joined in said instrument in writing because of her desire to aid her said husband in paying the creditors and depositors of said Washington-Alaska Bank.

VIII.

That the said promises were made on the distinct understanding and agreement that no litigation would be instituted against the said E. T. Barnette or any other person or persons jointly liable with him for any act or deed done by him during the time that he was president and director of said bank as aforesaid; and that, for the purpose of preventing any litigation, and as security for the faithful performance of the promises made by said E. T. Barnette and Isabelle Barnette, the said E. T. Barnette and Isabelle Barnette on the 18th day of March, 1911, with the knowledge, consent and approval of this Court, conveyed to the receivers of said bank, and the said receivers, by order of this Court, accepted a conveyance of title to an improved plantation containing 18,723 acres of land situated in the Republic of Mexico, and

certain improved and income producing property and lots situated in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining claims situated in the Fairbanks Precinct, Territory of Alaska; all of which property belonged at the time of said conveyance to said E. T. Barnette and Isabelle Barnette, and were and are worth the sum of \$600,000, [20] a sum greatly in excess of all the unpaid debts and liabilities of said bank.

IX.

That in said deed of property situated in the Republic of Mexico, as well as in said deed to property situated in Alaska, it is expressly provided that if the depositors and holders of unpaid drafts are not paid in full by the 18th day of November, 1914, either out of the property and assets of said Washington-Alaska Bank or otherwise, or by the said E. T. Barnette and Isabelle Barnette, said receiver may sell all or any part of said land at private sale for the best possible prices obtainable; and that the moneys and funds derived from the sale of said properties shall then be paid to the depositors and owners of unpaid drafts in an amount sufficient to pay their claims and demands in full; and that, if the proceeds derived from the assets of said bank and the amounts realized from the sale of said properties shall be sufficient to pay said depositors and owners of unpaid drafts in full, then the same is to be disbursed amongst said depositors and owners of unpaid drafts pro rata; and that if the amount derived from the sale of said property shall exceed the amount sufficient to satisfy

said amounts in full, with interest as above set forth, then the balance is to be returned to said E. T. Barnete and Isabelle Barnette. And it is further provided in said deed that if, after applying the moneys received from the property and assets of said Washington-Alaska Bank and the sale of said properties mentioned in said deeds, and any moneys obtained from George Edgar Ward and W. B. Biggs on account of an option given to them upon the 18th day of November, 1909, to purchase an undivided 49/100 interest in and to said Mexican property for the sum of approximately \$225,000, there shall still remain a balance due said depositors and holders of unpaid drafts, the said E. T. Barnette and Isabelle Barnette promise and agree to pay said balance in full. [21]

X.

That in said deed of the property situated in the Territory of Alaska, the receivers and their successors are authorized and empowered to take possession of the same and to receive and collect the rents, royalties and issues thereof, and disburse the same to the depositors and holders of unpaid drafts, under the orders of this Court; and that, in the event the said E. T. Barnette and Isabelle Barnette and the said receivers or their successors shall deem it at any time advisable to sell any of said real estate situated in Alaska, that the same may be done by said receivers, and the proceeds derived from such sale disbursed to the depositors and holders of unpaid drafts, under the order of this Court.

XI.

That the said receiver, plaintiff herein, holds a

large amount of property belonging to said bank which is of great value and has not been converted into money, and said property so held by him and the property so conveyed to the receivers by said E. T. Barnette and Isabelle Barnette are more than sufficient to satisfy all the claims, demands and obligations of creditors of said Washington-Alaska Bank.

XII.

That on the 29th day of March, 1911, the then receivers of the said Washington-Alaska Bank, agreed to accept in full satisfaction of the liability of said E. T. Barnette to the creditors of said Washington-Alaska Bank the said deeds of said property upon the terms and conditions thereof and the said promises of the said E. T. Barnette and Isabelle Barnette therein, and the said E. T. Barnette and Isabelle Barnette made, executed and delivered said deeds and made the said promises contained therein upon the distinct understanding and agreement that the same were in full satisfaction of all suits or causes of action then [22] existing against said E. T. Barnette on account of any and all matters and things arising from his connection or management of the affairs of the said Fairbanks Banking Company afterward known as Washington-Alaska Bank, and in full satisfaction of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank; and that said receivers accepted and received said promises and said deeds to said property under order of this Court in full satisfaction of all claims and causes of action of whatsoever nature that existed against the said E. T. Barnette for and on account

of his management of the affairs of said bank from the 12th day of March, 1908, to the 4th day of January, 1911, and for and on account of his acts as president and as a director of said corporation.

XIII.

That the receivers of said Washington-Alaska Bank, before the delivery and acceptance of said deeds hereinbefore mentioned, intended to, and if said agreement and deeds had not been made, executed and delivered to said receivers as hereinbefore stated, would have instituted an action against said E. T. Barnette to recover from said E. T. Barnette the amount of the dividend which was declared by said Fairbanks Banking Company upon the 12th day of March, 1910, and which in the complaint in this action, in paragraph 4 thereof, is alleged to have been declared wrongfully and fraudulently.

XIX.

That the promises of said E. T. Barnette and Isabelle Barnette, and the deeds to the property hereinbefore mentioned, were given by the said E. T. Barnette and Isabelle Barnette upon the express understanding and agreement that the same were in full satisfaction of any liability of the said E. T. Barnette on account of the declaration of said dividend and in discharge of any causes of action against him for or on account thereof, and the same were accepted by the said receivers of said bank [23] upon the distinct understanding that the same were in full satisfaction of the liability of the said E. T. Barnette to the creditors of said bank on account of the declaration of said dividend, and in full discharge of the

said E. T. Barnette on any causes of action that might arise therefrom.

XX.

That the receivers have received from the rents, royalties and issues of the property situated in the Territory of Alaska the sum of \$31,400 in cash;

That the value of the property situate in the town of Fairbanks, Alaska, is the sum of \$25,000;

That the value of the mining property situate in the Fairbanks Recording District, Alaska, is the sum of \$20 000.

That the value of the Mexican property cannot be definitely determined at this time, but the same is of great value, and was, at the time of the execution of said deed, of the value of \$500,000.

XXI.

That the moneys received by the receivers from said properties and the value of the property conveyed by the said E. T. Barnette and Isabelle Barnette to the receivers as hereinbefore stated, is more than ample to satisfy in full all of the liability of the said E. T. Barnette and the directors and officers of said bank to said corporation for and on account of any acts, deeds, or wrongs done by them as such officers and directors, or otherwise.

XXII.

These defendants allege that the receivers have received full and complete satisfaction of any and all claims for and on account of the declaration and payment of the dividend made by the Fairbanks Banking Company.

WHEREFORE these defendants pray that plain-

tiff take [24] nothing by his action, and that they have and recover of and from said plaintiff their costs and disbursements incurred in this action.

JOHN L. MCGINN,
MCGOWAN & CLARK,
A. R. HEILIG,

Attorneys for Answering Defendants.

I, John L. McGinn, being first duly sworn depose and say, That I am one of the defendants in the foregoing entitled action, that I have read the complaint and know the contents thereof, and believe the same to be true.

JOHN L. MCGINN.

Subscribed and sworn to before me this 1st day of June, 1914.

[Seal]

ALBERT R. HEILIG,
Notary Public for Alaska.

Commission expires June 18, 1917.

[Endorsed]: No. 1761. District Court, 4 Division, Territory of Alaska. F. G. Noyes, Receiver, vs John Zug et al. Amended Answer. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 2, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [25]

[Title of Court and Cause.]

Reply.

I.

Comes now the plaintiff and for reply to the further and separate answer of the defendants, with the exception of Hill, Wood and John A. Jesson, says:

First. That he denies that said bank was solvent at the time said dividend was declared and at the time said defendants receive the same;

Second. That as to whether or not said defendants believed said bank to be solvent or as to whether or not they received said dividend in good faith relying on the officers of said bank, or as to whether or not they believed that the dividend paid to them came from the profits of said bank and not otherwise, this plaintiff has neither knowledge nor information sufficient to form a belief and he therefore denies the same.

II.

For reply to the further and separate answer of the defendant Wood plaintiff says:

First. That as to whether or not at the time said dividend was declared and that at the time the same was received by him said defendant Wood believed the said bank to be solvent, or as to whether or not said defendant Wood received said dividend in good faith and in the honest belief that said bank was solvent, this plaintiff has neither knowledge nor information sufficient to form a belief and he therefore denies the same. [26]

Second. Plaintiff denies each and every other allegation and statement contained in said further and separate answer of the said defendant Wood.

III.

For reply to the further and separate answer of the defendant Hill, plaintiff says:

First. That he admits that at the time of the

declaration of said dividend the said Hill was not in the District of Alaska;

Second. That he admits that at the time of the declaration of said dividend the stock of the said Hill remained upon the books of said bank in the name of the said Hill;

Third. As to whether or not the said Hill never had any notice that the said dividend was declared until after the suspension of said bank this plaintiff has neither knowledge nor information sufficient to form a belief and he therefore denies the same;

Fourth. As to whether or not at the time said dividend was declared the stock of the said Hill was pledged to E. T. Barnette and as to the time when said alleged debt become due, this plaintiff has neither knowledge nor information sufficient to form a belief and he therefore denies the same;

Fifth. He denies each and every other allegation and statement contained in said separate answer of the defendant Hill.

IV.

For reply to the further and separate answer of the defendant John A. Jesson plaintiff says:

First. That he denies that the said Fairbanks Banking Company paid the amount declared as a dividend on the stock owned by the said John A. Jesson to E. R. Jesson and L. N. Jesson;

Second. He denies that the said bank was solvent at the time said dividend was declared; [27]

Third. As to the remaining allegations and statements set forth in said separate answer of the de-

fendant John A. Jesson this plaintiff has neither knowledge nor information sufficient to form a belief and he therefore denies the same.

V.

For reply to the last further and separate defense of the defendants plaintiff says:

First. That he denies each and every allegation and statement therein contained, except as herein-after expressly admitted;

Second. He admits paragraphs I, II and III thereof;

Third. He admits that E. T. Barnette was president of the Fairbanks Banking Company and a director thereof from the time of its organization on March 12, 1908, until it closed its doors on January 4, 1911, and that as such he was active and influential in the management and control of said bank;

Fourth. He admits that at the time of the suspension of said bank the said E. T. Barnette was not within the Territory of Alaska, and that in the month of February, 1911, he returned to Fairbanks, Alaska;

Fifth. He admits that Isabelle Barnette was and is the wife of the said E. T. Barnette and that she joined him in the deeds of conveyance therein referred to;

Sixth. He admits the conveyance to the former receivers herein of title to the property referred to in said answer, and that he has taken possession thereunder of the property therein described and located in the Territory of Alaska;

Seventh. He admits that he has received the rents, royalties and issues of said property situated in the Territory of Alaska, and he alleges that the net amount thereof so received by him up to June 1st, 1914, is approximately \$31,478.65, less such reasonable charge as may be allowed for the collection thereof [28] as provided in said conveyance.

WHEREFORE, plaintiff prays that he have judgment against these defendants according to the prayer of his complaint herein.

O. L. RIDER,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: That he as Receiver is plaintiff named in the foregoing reply; that he has read said reply, knows the contents thereof, and believes the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 4th day of June, 1914.

[Seal] W. F. WHITELEY,
Notary Public in and for the Territory of Alaska,
Residing at Fairbanks, Alaska.

My commission expires Aug. 19, 1916.

Service of copy is hereby acknowledged this 4th day of June, 1914.

McGOWAN & CLARK,
J. L. McGINN and
A. R. Heilig,
Attorneys for Defendants Appearing.

[Endorsed]: No. 1761. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington Alaska Bank, Plaintiff, vs. John Zug et al., Defendants. Reply.

Filed in the District Court, Territory of Alaska, 4th Div. Jun. 4, 1914. Angus McBride, Clerk.
[29]

[Title of Court and Cause.]

BE IT REMEMBERED that on the 8th day of June, 1914, the above-entitled matter came on for trial before the Court without a jury upon the issues as joined between the plaintiff and the defendants, the Honorable F. E. Fuller, Judge of said court, presiding; the plaintiff appearing in person and by his attorney, O. L. Rider; and the defendants appearing in person and by their respective attorneys John L. McGinn, A. R. Heilig, and McGowan & Clark.

And thereupon the plaintiff and the defendants so appearing, to wit, J. A. Jesson, James W. Hill, G. W. Palmer, E. R. Jesson, M. F. Hall, John L. McGinn, Dave Petree, John Zug, Mrs. Mary Anderson, R. C. Wood, J. L. Sale, G. A. Coleman, George Preston and J. A. Healey, in open court agreed to submit the issues herein for final determination upon the testimony adduced, the admissions of the parties contained and set forth in the pleadings herein, and upon the testimony, so far as the same is applicable, heretofore introduced and received by the Court in cause Number 1756 entitled "F. G. Noyes, Receiver of the Washington-Alaska Bank, a corporation,

plaintiff, vs. J. A. Jesson et al., defendants," pending in said court.

And thereupon the Court, after hearing the arguments of counsel and upon consideration of said pleadings and said testimony, and being fully advised in the premises, does hereby make and file, as constituting its decision in said case, the following [30] Findings of Fact and Conclusions of Law, to wit:

Findings of Fact.

I.

That the Washington-Alaska Bank, of which the plaintiff herein is receiver, was incorporated under the laws of the State of Nevada on the 21st day of January, 1908, with an authorized capital of \$300,000, divided into 3000 shares of the par value of \$100. each and that said bank was incorporated under the name of Fairbanks Banking Company; that subsequently, by amendment to its articles of incorporation, said name was changed to Washington-Alaska Bank.

II.

That said bank commenced business in the town of Fairbanks, Alaska, on the 16th day of March, 1908, and continued to carry on a general banking business in said town until the 4th day of January, 1911, when it suspended business and closed its doors.

III.

That on the 12th day of April, 1910, the said Fairbanks Banking Company, by its then Board of Directors, declared a twenty per cent dividend on

the par value of its then outstanding capital stock of \$168,000, which dividend amounted to \$33,720. That said dividend was paid to the then stockholders of said bank, the defendant herein, either in cash or by crediting the amount thereof upon notes owing by said stockholders to said bank in the amounts set forth in the complaint herein.

IV.

That of said stockholders, J. A. Jesson, J. W. Hill, G. W. Palmer, E. R. Jesson, M. F. Hall, John L. McGinn, Dave Petree, John Zug, Mrs Mary Anderson, R. C. Wood, J. L. Sale, G. A. Coleman, George Preston, and J. A. Healey have joined issue with the plaintiff upon the matters and things set up in the complaint, and are now before the Court. [31]

V.

That of the defendants now before the Court as aforesaid, J. A. Jesson, John L. McGinn, and R. C. Wood were directors of said bank at the time said dividend was declared and paid, and gave their consent to the same. That the said McGinn was, at said time, the owner of shares of the capital stock of said company of the par value of \$10,000, and there was paid to him thereon on said dividend the sum of \$2000; that the said defendant John A. Jesson was, at said time, the owner of shares of the capital stock of said Company of the par value of \$10,000, and there was paid to him thereon on said dividend the sum of \$2000; that the said Wood was, at said time, the owner of shares of the capital stock of said Company of the par value of \$2500, and there was paid to him thereon on said dividend the sum of \$500.

That none of the remaining defendants now before the Court as aforesaid were officers or directors of said bank at the time said dividend was declared or paid to them.

VI.

That at the time said dividend was declared and paid, the said Fairbanks Banking Company did not have any surplus or undivided profits out of which the same could be declared and paid, and said dividend was paid out of the capital of said bank. That said facts were known to the defendants McGinn, Wood, and J. A. Jesson, and each of them, at said time, or should have been known by them by the exercise of reasonable diligence.

VII.

That the dividend so paid to the defendants Hill, Palmer, E. R. Jesson, M. F. Hall, Petree, Zug, Mrs. Mary Anderson, Sale, Coleman, Preston, and Healey was received by them without knowledge on their part that said bank did not have any surplus or undivided profits out of which said dividend could be declared and paid, or that the same was paid out of the capital of said [32] bank, and they and each of them received the same in good faith and in the honest belief that the same was declared and paid to them out of the surplus or undivided profits of said bank.

VIII.

That said dividend was declared and paid in violation of the laws of the State of Nevada, under which said corporation was organized, and in violation of

the by-laws of the said Fairbanks Banking Company, and was wrongful and illegal.

IX.

That the assets of said bank now in the hands of said Receiver are insufficient to pay its liabilities, and the amount of said liabilities is more than \$470,000 in excess of the par value of said assets.

Conclusions of Law.

Upon the foregoing Findings of Fact, the Court finds as Conclusions of Law:

I.

That the defendant J. A. Jesson is liable to the plaintiff by reason of the payment to him of said dividend in the sum of \$2000.

II.

That the defendant John L. McGinn is liable to the plaintiff by reason of the payment to him of said dividend in the sum of \$2000.

III.

That the defendant R. C. Wood is liable to the plaintiff by reason of the payment to him of said dividend in the sum of \$500.

IV.

That the defendants J. W. Hill, G. W. Palmer, E. R. Jesson, M. F. Hall, Dave Petree, John Zug, Mrs. Mary Anderson, J. L. Sale, G. A. Coleman, George Palmer, J. A. Healey are not liable to the plaintiff in any sum by reason of the payment to them of said [33] dividend, and that as to them and each of them this action should be dismissed.

Let Decree be entered according to the above.

Signed this 6th day of July, 1914.

F. E. FULLER,
Judge of said Court.

Entered in Court Journal No. 2, page 38, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 4, Fairbanks, Alaska.

Due service hereof admitted this 15 June, McGowan & Clark, A. R. Heilig, Attorney for John L. McGinn.

[Endorsed]: No. 1761. F. G. Noyes, Receiver, etc., Plaintiff, vs. John Zug et al., Defendants. Findings of Fact and Conclusions of Law. Proposed—Filed in the District Court, Territory of Alaska, 4th Div. Jun. 15, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk.

[34]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 1761.

F. G. NOYES, Receiver of the Washington-Alaska
Bank, a Corporation,

Plaintiff,

vs.

JOHN ZUG et al.,

Defendants.

Decree.

BE IT REMEMBERED that on the 8th day of June, A. D. 1914, the above-entitled cause came on regularly for trial before the Court, without a jury, upon the issues as joined between the plaintiff and the defendants J. A. Jesson, James W. Hill, G. W. Palmer, E. R. Jesson, M. F. Hall, John L. McGinn, Dave Petree, John Zug, Mrs. Mary Anderson, R. C. Wood, J. L. Sale, G. A. Coleman, George Preston, and J. A. Healey; The Honorable F. E. Fuller, Judge of said court, presiding; the plaintiff appearing in person and by his attorney O. L. Rider, and the defendants appearing by their attorneys McGowan & Clark, John L. McGinn and A. R. Heilig;

And thereupon the plaintiff and the above-named defendants in open court agreed to submit the issues herein for final determination upon the testimony adduced and upon the admissions of the parties contained and set forth in the pleadings herein and upon the testimony, so far as the same is applicable to said issues, heretofore introduced and received by the Court in cause Number 1756 entitled "F. G. Noyes, Receiver of the Washington-Alaska Bank, a corporation, plaintiff, vs. J. A. Jesson et al., defendants," pending in said court.

And thereupon the Court, after hearing the arguments of counsel and upon consideration of said pleadings and said testimony, and being fully advised in the premises, did, on the 6th day of July, 1914, make and file its findings of fact and conclusions of law upon the issues herein; [35]

And thereupon upon consideration thereof it is by the Court ORDERED, ADJUDGED and DECREED, as follows, to wit:

I.

That the plaintiff have and recover of and from the defendant J. A. Jesson, the sum of \$2,000.00;

II.

That the plaintiff have and recover of and from the defendant John L. McGinn the sum of \$2,000.00;

III.

That the plaintiff have and recover of and from the defendant R. C. Wood the sum of \$500.00;

IV.

That the plaintiff take nothing as against the defendants James W. Hill, G. W. Palmer, E. R. Jesson, M. F. Hall, Dave Petree, John Zug, Mrs. Mary Anderson, J. L. Sale, G. A. Coleman, George Preston and J. A. Healey.

All of which is now finally ORDERED, ADJUDGED AND DECREED this 6th day of July, 1914, at the cost of the defendants J. A. Jesson, John L. McGinn and R. C. Wood.

Let execution issue for the enforcement of the judgment herein rendered against the defendants J. A. Jesson, John L. McGinn and R. C. Wood.

Dated Fairbanks, Alaska, this 6th day of July, 1914.

F. E. FULLER,

Judge of the District Court, Territory of Alaska,
Fourth Division.

Entered in Court Journal No. 2, page 41, Iditarod, Alaska;

Entered in Court Journal No. 13, page 5, Fairbanks, Alaska.

Service of copy accepted this — day of June, 1914. McGowan & Clark, John L. McGinn, A. R. Heilig.

[Endorsed]: No. 1761. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, Plaintiff, vs. John Zug et al., Defendants. Decree. [36]

Filed in the District Court, Territory of Alaska, 4th Div. Proposed. Jun. 15, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. [37]

[Title of Court and Cause.]

Bill of Exceptions.

BE IT REMEMBERED that upon the 8th day of June, 1914, the above-entitled cause came on for trial before the Judge of the above-entitled court; O. L. Rider appearing as attorney for the plaintiff, and the defendants appearing by their attorneys, John L. McGinn, A. R. Heilig and McGowan & Clark, the defendants represented by said counsel being J. A. Jesson, James W. Hill, G. M. Palmer, E. R. Jesson, M. F. Hall, John L. McGinn, David Petree, John Zug, Mrs. Mary Anderson, R. C. Wood, J. L. Sale,

G. A. Coleman, George Preston and J. A. Healey.

It was thereupon agreed to submit the issues involved in the pleadings in this cause for final determination upon the admissions contained in the pleadings herein, and upon the testimony and evidence introduced and received (so far as the same is applicable and material) in evidence by the Court in that certain case entitled *F. G. Noyes, receiver of the Washington-Alaska Bank, a corporation, plaintiff, vs. J. A. Jesson et al., defendants, number 1756*, and which said testimony and evidence is set forth in the Bill of Exceptions filed, settled and allowed in said cause of *F. G. Noyes, receiver, plaintiff, vs. J. A. Jesson et al., defendants, number 1756*, now on appeal to the United States Circuit Court of Appeals for the Ninth Circuit from this Court, which said Bill of Exceptions in said cause [38] number 1756 contains and includes all of the testimony, evidence and exhibits given, offered, admitted and used upon the trial of this cause in support of and against the allegations and denials of the Complaint Answers and Amended Answer of *J. A. Jesson, M. F. Hall, David Petree, John L. McGinn, R. C. Wood, James W. Hill, E. R. Jesson, Mrs. Mary Anderson, John Zug, John A. Healey and John L. Sale*, and of the Replies thereto.

BE IT REMEMBERED that after the plaintiff and the defendants had rested the said cause, the same was submitted to the Court for consideration and deliberation, and thereafter and before the Findings of Fact and Conclusions of Law had been made and signed by the Court and filed with the clerk

thereof, the defendants Wood, McGinn and J. A. Jesson requested the Court to make the following Findings of Fact and Conclusions of Law, namely:

1.

That on the 12th day of April, 1910, the said Fairbanks Banking Company by its then board of directors, declared a twenty per cent dividend on the par value of its then outstanding capital stock of \$168,600, which dividend amounted to \$33,720. That said dividend was paid to the stockholders of said bank either in cash or by crediting the amount thereof upon notes owing by said stockholders to said bank in the amount set forth in the complaint herein.

2.

That at the time said dividend was declared and paid the said Fairbanks Banking Company had undivided profits amounting to said sum of \$33,720, and said dividend was declared and paid out of the undivided profits of said bank.

3.

That in the month of September, 1909, said Fairbanks Banking Company purchased the entire capital stock of the Washington-Alaska Bank of Washington.

4.

That the end of the fiscal year of the Washington-Alaska Bank of Washington and of the Fairbanks Banking Company was the 31st day of December of each year, and at said time it had been the custom and practice of said Washington-Alaska Bank and said Fairbanks Banking Company to charge off all debts due said banks that in the judgment of their

officers were bad and uncollectible, [39] and which had not been charged off during said fiscal year.

5.

That said bad debts due to the bank and so charged off were not, after said time, carried as an asset of said bank; and, after said bad debts had been deducted from the assets, any profits that were shown to exist, after the deduction of all liabilities including outstanding stock, were placed in the undivided profit account, and was so carried until the end of the next fiscal year unless a dividend was declared upon the same or bad debts charged against the same during the next succeeding fiscal year.

6.

That at the end of the fiscal year of 1909, R. C. Wood, who was then the President and manager of the First National Bank, and also acting as advisory manager of said Washington-Alaska Bank and Fairbanks Banking Company, requested George Wesch, then cashier of the Washington-Alaska Bank, to make a list of the loans and discounts of said bank that he considered bad and uncollectible.

That said Wesch thereupon prepared a list of all the said loans and discounts due said bank that he considered bad and uncollectible, and presented the same to said R. C. Wood, and thereupon the said Wood and Wesch went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of \$8,599.59.

That said loans and discounts due said bank were

then and there, to wit, on December 31st, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of \$56,106.97. [40]

7.

That the said George Wesch was and is a man of high standing in this community, a banker of experience, capable and honest, and well acquainted with the securities of said bank and the standing of its debtors.

8.

That the said R. C. Wood was a man of high standing in the community, the president of the First National Bank, a banker of experience, and well acquainted with the conditions of said Washington-Alaska Bank, and the securities held by it for loans made by, and due to, said bank.

9.

That the said R. C. Wood, immediately after his appointment as advisory manager of said banks, prepared a record of all the loans and discounts of said Washington-Alaska Bank and said Fairbanks Banking Company, which said record contained the names of the debtors, the amounts due the said Washington-Alaska Bank and Fairbanks Banking Company, and a description and the location of all property, real and personal, given to secure the loans made by said banks, which said record ever since the month of May, 1910, has been a record of said Fairbanks Banking Company, and is now in the pos-

session of the receiver thereof.

10.

That said record-book so containing the names of the debtors of said Washington-Alaska Bank and the Fairbanks Banking Company, and a description and location of the properties given to secure said debts, although in the possession of the present receiver from the date of his appointment, was never examined by him, and the securities mentioned and described in said book given to secure loans were not known to him to be in existence. [41]

11.

That at the end of the fiscal year, 1909, the said R. C. Wood requested J. A. Jackson, cashier of the Fairbanks Banking Company, to make out a list of loans and discounts of said Fairbanks Banking Company that he considered bad and uncollectible.

That said Jackson thereupon prepared a list of all said loans and discounts that he considered bad and uncollectible and presented the same to said R. C. Wood, and thereupon the said Wood and Jackson went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of \$24,937.37.

That said loans and discounts due said bank were then and there, to wit, on December 31st, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of \$9,881.78.

12.

That the said J. A. Jackson was and is a man of high standing in the community, a banker of experience, capable and honest, and well acquainted with the securities of said bank and the standing of its debtors.

13.

That at the meeting of the board of directors of said Fairbanks Banking Company held on January 12, 1910, statements of the condition of the said Washington-Alaska Bank of Washington and the Fairbanks Banking Company as of date December 31, 1909, after said bad debts hereinbefore mentioned had been charged off, were presented by the officers of said banks to said board of directors; and, after the same had been discussed and [42] examined by said directors, the same were ordered filed.

That said statement showed that the undivided profits of the Washington-Alaska Bank for the year ending December 31, 1909, after deducting what the officers of said bank regarded to be all of its bad loans and discounts, was the sum of \$56,106.97.

That said statement showed that the undivided profits of the said Fairbanks Banking Company for the year ending December 31, 1909, after deducting all the bad debts, was the sum of \$9,881.78.

14.

That upon the 12th day of April, 1910, the directors of the Washington-Alaska Bank declared a dividend of \$50,000.

15.

That said dividend of the Washington-Alaska

Bank of Washington, to wit, \$50,000, was paid to its stockholders, the Fairbanks Banking Company, \$25,000.00, of which said sum was ordered by the directors to be placed to the credit of the undivided profit account of said Fairbanks Banking Company, and the other \$25,000.00 was directed to be credited on the amount for which said Fairbanks Banking Company was carrying the stock of said Washington-Alaska Bank.

16.

That after said sum of \$25,000 had been added to said undivided profit account of said Fairbanks Banks Banking Company, the undivided profit account of said bank at said time amounted to the sum of \$34,828.55.

17.

That at the date of the declaration of said dividend, and after the adding of said sum of \$25,000 to the undivided profit account, the books of said company showed that the undivided profit account amounted to the sum of \$34,828.55, and the directors at said time honestly and in good faith believed that [43] the undivided profits of said Fairbanks Banking Company was said sum of \$34,828.55, and said directors were so advised by the officers of said bank.

18.

That the profit of said Washington-Alaska Bank, and Fairbanks Banking Company, and First National Bank for the year ending December 31, 1909, was the sum of \$131,332.91; and, after charging off bad debts on said three banks to the amount of \$42,836.96, the net profits of said three banks for said

year was \$88,495.95.

19.

That the said Fairbanks Banking Company, at the time of the declaration of the dividend, was carrying the stock of the Gold Bar Lumber Company for the sum of \$341,949.00, and said directors in good faith believed, and from the reports of the officers of said Gold Bar Lumber Company, as well as from the reports of people of high standing who were acquainted with said property and the value thereof, had a right to believe, that said property was worth said amount.

20.

That the advancement made to the Tanana Electric Company by the Fairbanks Banking Company, for which two notes of the Tanana Electric Company were given to said bank amounting to the sum of \$27,997.38, were authorized and directed by the Scandinavian-American Bank of Seattle, State of Washington, and the said directors, at the time of the declaration of said dividend, believed and had a right to believe that the same was a good and valid claim against the said Scandinavian-American Bank, and a valuable asset of said Fairbanks Banking Company to the amount that the same was carried by them. [44]

21.

That said dividend was declared by said directors of said bank in good faith and in the honest belief, and after the exercise of due care, that the undivided profits of said bank amounted to said sum of \$34,828.55, and that the values placed upon the assets of said bank was the true and correct one, and that the

amount for which said bank was carrying its assets, and particularly its stocks, loans and discounts, were the true and correct valuation of the same.

22.

That the dividend so paid to the stockholders, and which was received by the defendant answering in this case, was received by them without knowledge on their part that said bank did not have any surplus or undivided profits out of which said dividend could be declared or paid, or that the same was paid out of the capital of said bank; and they and each of them received the same in good faith and in the honest belief that the same was declared and paid to them out of the surplus and undivided profits of said bank.

23.

That upon the 12th day of April, 1910, at a meeting of the board of directors at which the dividend was declared by the Fairbanks Banking Company which is complained of in the complaint, the directors present at said meeting of the board of directors, were: E. T. Barnette, Ray Brumbaugh, John A. Jesson, R. C. Wood, John L. McGinn, J. A. Jackson and David Yarnell.

24.

That the name of said Fairbanks Banking Company was, in the month of October, 1910, changed to the name of Washington-Alaska Bank, of Nevada. [45]

25.

That upon the 4th day of January, 1911, the said Washington-Alaska Bank closed its doors and suspended business, and immediately thereafter, F. W.

Hawkins and E. H. Mack were appointed receivers by this Court to take care of and administer the estate of said bank, and they immediately entered upon the performance of their duties as such.

26.

That in the month of March, 1911, the then receivers of the Washington-Alaska Bank, formerly Fairbanks Banking Company, intended to bring a suit or action in the District Court for the Territory of Alaska, Fourth Judicial Division, against E. T. Barnette, who had been the president of said Fairbanks Banking Company, and a director thereof, from the time of its organization as a corporation on March 12, 1908, until it closed its doors on January 4, 1911, and as such was active and influential in the management and control of said Fairbanks Banking Company.

27.

That at the time of the suspension of said bank, said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said Washington-Alaska Bank, and with the then receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against the said E. T. Barnette on account of his liability to the creditors of said bank on account of his management thereof from the time of its organization on the 12th day of March, 1908, until the 4th day of January, 1911.

28.

That as a result of said negotiations, and in full satisfaction [46] of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank for and on account of the acts and wrongs done by him, if any, during said time that he was president and director thereof, the said E. T. Barnette and Isabelle Barnette, his wife, executed an instrument in writing in which the said E. T. Barnette admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all of the depositors and holders of unpaid drafts of said bank in full any deficiency that might be found to exist upon the 18th day of November, 1914, between the amounts due said depositors and holders of unpaid drafts on the 4th day of January, 1911, with interest thereon at the rate of six per cent per annum from said 4th day of January, 1911, until the same should be paid, and the amount realized out of the property and assets of said Washington-Alaska Bank and paid to said depositors and holders of unpaid drafts.

29.

That said Isabelle Barnette was and is the wife of said E. T. Barnette, and the said Isabelle Barnette joined in said instrument in writing because of her desire to aid her said husband in paying the creditors and depositors of said Washington-Alaska Bank.

30.

That the said premises were made on the distinct understanding and agreement that no litigation

would be instituted against the said E. T. Barnette or any other person or persons jointly liable with him for any act or deed done by him during the time that he was president and director of said bank as aforesaid; and that, for the purpose of preventing any litigation, and as security for the faithful performance of the promises made by said E. T. Barnette and Isabelle Barnette, the said E. T. [47] Barnette and Isabelle Barnette on the 18th day of March, 1911, with the knowledge, consent and approval of this Court, conveyed to the receivers of said bank, and the said receivers, by order of this Court, accepted, a conveyance of title to an improved plantation containing 18,723 acres of land situated in the Republic of Mexico, and certain improved and income-producing business property and lots situated in the incorporated town of Fairbanks, Territory of Alaska and certain large interests in valuable association placer mining claims situated in the Fairbanks Precinct, Territory of Alaska; all of which property belonged at the time of said conveyances to said E. T. Barnette and Isabel Barnette and were and are worth the sum of \$600,000.00, a sum greatly in excess of all the unpaid debts and liabilities of said bank.

31.

That in said deed of property situated in the Republic of Mexico, as well as in said deed to property situated in Alaska, it is expressly provided that if the depositors and holders of unpaid drafts are not paid in full by the 18th day of November, 1914, either out of the property and assets of said Wash-

ington-Alaska Bank or otherwise, or by the said E. T. Barnette and Isabelle Barnette, said receiver may sell all or any part of said land at private sale for the best possible prices obtainable; and that the moneys and funds derived from the sale of said properties shall then be paid to the depositors and owners of unpaid drafts in an amount sufficient to pay their claims and demands in full; and that, if the proceeds derived from the assets of said bank and the amounts realized from the sale of said properties shall be insufficient to pay said depositors and owners of unpaid drafts in full, then the same is to be disbursed amongst said depositors and owners of unpaid drafts *pro rata*; and that if the amount derived from the sale of said property shall exceed the [48] amount sufficient to satisfy said amounts in full, with interest as above set forth, then the balance is to be returned to said E. T. Barnette and Isabelle Barnette.

And it is further provided in said deeds that if, after applying the moneys received from the property and assets of said Washington-Alaska Bank and the sale of said properties mentioned in said deeds, and any moneys obtained from George Edgar Ward and W. B. Biggs on account of an option given to them upon the 18th day of November, 1909, to purchase an undivided 49/100 interest in and to said Mexican property for the sum of approximately \$225,000.00, there shall still remain a balance due said depositors and holders of unpaid drafts, the said E. T. Barnette and Isabelle Barnette promise and agree to pay said balance in full.

32.

That in said deed of the property situate in the Territory of Alaska the receivers and their successors are authorized and empowered to take possession of the same and to receive and collect the rents, royalties and issues thereof, and disburse the same to the depositors and holders of unpaid drafts, under the orders of this Court; and that, in the event the said E. T. Barnette and Isabelle Barnette and the said receivers or their successor shall deem it at any time advisable to sell any of said real estate situate in Alaska, that the same may be done by said receivers, and the proceeds derived from such sale disbursed to the depositors and holders of unpaid drafts, under the order of this Court.

33.

That the said receiver, plaintiff herein, holds a large amount of property belonging to said bank which is of great [49] value and has not been converted into money, and said property so held by him and the property so conveyed to the receivers by said E. T. Barnette and Isabelle Barnette are more than sufficient to satisfy all claims, demands and obligations of creditors of said Washington-Alaska Bank.

34.

That on the 29th day of March, 1911, the then receivers of the said Washington-Alaska Bank agreed to accept in full satisfaction of the liability of said E. T. Barnette to the creditors of said Washington-Alaska Bank the said deeds of said property upon the terms and conditions thereof and the said prom-

ises of the said E. T. Barnette and Isabelle Barnette therein, and the said E. T. Barnette and Isabelle Barnette made, executed, and delivered said deeds and made the said premises contained therein upon the distinct understanding and agreement that the same were in full satisfaction of all suits or causes of action then existing against said E. T. Barnette on account of any and all matters and things arising from his connection or management of the affairs of the said Fairbanks Banking Company, afterwards known as Washington-Alaska Bank, and in full satisfatcion of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank; and that said receivers accepted and received said promises and said deeds to said property upon order of this court in full satisfaction of all claims and causes of action of whatsoever nature that existed against the said E. T. Barnette for and on account of his management of the affairs of said bank from the 12th day of March, 1908, to the 4th day of January, 1911, and for and on account of his acts as president and as a director of said corporation. [50]

35.

That the receivers of said Washington-Alaska Bank, before the delivery and acceptance of said deeds hereinbefore mentioned, intended to, and if said agreement and deeds had not been made, executed and delivered to said receivers as hereinbefore stated, would have instituted an action against said E. T. Barnette to recover from said E. T. Barnette the amount of the dividend which was declared by said Fairbanks Banking Company upon the 12th day

of March, 1910, and which in the complaint in this action, in paragraph 4 thereof, is alleged to have been declared wrongfully and fraudulently.

36.

That the promises of said E. T. Barnette and Isabelle Barnette and the deeds to the property hereinbefore mentioned, were given by the said E. T. Barnette and Isabelle Barnette upon the express understanding and agreement that the same were in full satisfaction of any liability of the said E. T. Barnette on account of the declaration of said dividend and in discharge of any causes of action against him for and on account thereof, and the same were accepted by the said receivers of said bank upon the distinct understanding that the same were in full satisfaction of the liability of the said E. T. Barnette to the creditors of said bank on account of the declaration of said dividend, and in full discharge of the said E. T. Barnette on any causes of action that might arise therefrom.

37.

That the receivers have received from the rents, royalties and issues of the property situate in the Territory of Alaska, the sum of \$31,400.00 in cash.

That the value of the property situate in the town of Fairbanks, Alaska, is the sum of \$25,000.

That the value of the mining property situate in the Fairbanks Recording District, Alaska, is the sum of \$20,000. [51]

That the value of the Mexican property cannot be definitely determined at this time, but the same is of great value, and was, at the time of the execution of

said deed, of the value of \$500,000.

38.

That the moneys received by the receivers from said properties and the value of the property conveyed by the said E. T. Barnette and Isabelle Barnette to the receivers as hereinbefore stated is more than ample to satisfy in full all the liability of the said E. T. Barnette and the directors and officers of said bank to said corporation for and on account of any acts, deeds, or wrongs done by them as such officers and directors, or otherwise.

As Conclusions of Law the Court finds:

Conclusions of Law.

1.

That said dividend was declared and paid out of the undivided profits of the Fairbanks Banking Company.

2.

That said defendants received said dividend honestly and in good faith believing that the same was declared and paid out of the undivided profits of said Fairbanks Banking Company, and they had no knowledge or notice that the same or any part thereof was declared and paid out of its capital stock.

3.

That there was a complete accord and satisfaction, as to all of the matters and things set forth in the complaint herein, had between E. T. Barnette and Isabelle Barnette and the former receivers of said Washington-Alaska Bank, and that by reason [52]

thereof all the matters and things charged in said complaint have been fully paid and satisfied.

4.

That the defendants are entitled *are entitled* to a judgment and decree that the plaintiff recover nothing by this action and that they have judgment for their costs and disbursements.

Which Findings of Fact and Conclusions of Law the Court refused to sign as the Findings of Fact and Conclusions of Law in the above-entitled cause; and, to the ruling of the Court in refusing to make the Findings of Fact as therein set forth and as requested by the defendants, the defendants then and there excepted separately to the refusal of the Court to make each, any and all of said requested findings, and an exception was then and there allowed by the Court to the refusal to make each, any and all thereof; and to the refusal of the Court to make the Conclusions of Law as requested by the defendants, or conclusions of similar import thereto, as set forth in paragraphs 1, 2, 3 and 4 of said proposed Conclusions of Law, the defendants then and there excepted, and a separate exception was allowed by the Court for the refusal to make each, any and all of the same.

That before the Findings of Fact and Conclusions of Law were signed in the above-entitled cause the defendant duly filed and presented to the Court their objections to the Findings of Fact and Conclusions of Law, as follows:

Defendants objected and excepted to that portion of Finding of Fact number 5 wherein it is stated

that the said Wood was at said time the owner of the shares of the capital stock of said company of the par value of \$250.00, and that there was paid to him thereon on said dividend the sum of \$500.00, for the reason that the same is not supported by the evidence offered on the trial of said cause and is contrary thereto; the evidence disclosing [53] that the said Wood was merely holding the said shares of stock in trust for one Joseph Conta, and that he received said dividend for the use and benefit of said Joseph Conta, and that the same was paid to the said Conta, and that the money was never paid to the said R. C. Wood; which objection was overruled by the Court and an exception then and there allowed by the Court to the defendants J. A. Jesson, Wood and McGinn for the overruling of the same.

Defendants objected to Finding of Fact number 6 for the reason that the same was contrary to the evidence given upon the trial of the above-entitled cause and is not supported by any evidence; evidence disclosing that at said time there was undivided profits out of which said dividend was declared and ordered paid; which objection was overruled by the Court, and an exception then and there allowed to said defendants Wood, McGinn and J. A. Jesson for the overruling of the same.

Said defendants objected to Finding of Fact number 6 and to that portion thereof wherein it is stated that the fact that said dividend was paid out of the capital of said bank was known to the defendants McGinn, Wood and J. A. Jesson, and each of them, at said time, or should have been known by them

by the exercise of reasonable diligence; for the reason that the same was not supported by the evidence given upon the trial of said cause, and is contrary thereto; the evidence disclosing undisputably that at the time of the declaration of said dividend the directors and officers of said bank honestly and in good faith believed that there were undivided profits out of which said dividend could be declared, and that the same was not an impairment of the capital stock of said corporation, and that said dividend was received by said directors of said institution in good faith and in the honest belief that said dividend was rightfully declared [54] and that they had a right to accept the same; which objection was overruled by the Court, and an exception then and there allowed by the Court to said defendants for the overruling of the same.

That said defendants Wood, McGinn and J. A. Jesson objected to Finding of Fact number 9 wherein it is stated that the amount of said liabilities is more than \$470,000 in excess of the value of said assets; for the reason that the same is not supported by the evidence given upon the trial of said cause, and is contrary thereto; the evidence disclosing that the present value of the assets of said bank is so uncertain and indefinite from the evidence introduced that the Court is not able to make a finding upon said question; which objection was overruled by the Court, and an exception then and there allowed the said defendants for the overruling of the same.

That the defendants objected to the Conclusions

of Law numbered 1, 2 and 3, for the reason that the same are contrary to the law, and not supported by the evidence given upon the trial of said cause; which objections were overruled by the Court, and an exception duly allowed said defendants Wood, McGinn and J. A. Jesson to the overruling of each and all of the same.

And now in furtherance of justice and that right may be done the said defendants Wood, McGinn and J. A. Jesson present the foregoing as their Bill of Exceptions in this case, and pray that the same may be settled and allowed, and signed and certified by the Judge of this Court in the manner provided by law; it having been stipulated and agreed between the attorney for the plaintiff and the attorneys for said defendants that the testimony set forth in the Bill of Exceptions in the case of F. G. Noyes, as receiver, vs. J. A. Jesson et al., number 1756, need not be set forth [55] herein, but that said testimony by reference is made a part of this Bill of Exceptions; it being also agreed that this cause be submitted upon the testimony set forth in said Bill of Exceptions at the same time that said cause number 1756 is argued, presented and submitted to the United States Circuit Court of Appeals for the Ninth Circuit.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. MCGINN,

Attorneys for said Defendants Wood, McGinn
and J. A. Jesson.

Service of the foregoing Bill of Exceptions by receipt of a copy thereof on this 19th day of September, 1914, is hereby admitted.

R. F. ROTH,
Attorney for Plaintiff. [56]

[Title of Court and Cause.]

Order Settling Bill of Exceptions.

BE IT REMEMBERED, that upon the 19th day of September, 1914, the defendants R. C. Wood, John L. McGinn and J. A. Jesson presented the foregoing Bill of Exceptions to the Court for settlement, which said proposed Bill of Exceptions was served and filed within the time allowed by the orders of this Court.

And it appearing to the Court from an examination of the proposed Bill of Exceptions that, as therein set forth, the Bill of Exceptions in the case of F. G. Noyes, as receiver, plaintiff, vs. J. A. Jesson et al., defendants, number 1756, contains all of the evidence, testimony and exhibits introduced and given upon the trial of this cause in support of and against the allegations and denials of the Complaint, Answers, Amended Answer, and Replies; and also all of the testimony, evidence and exhibits introduced and given upon the trial of this cause in support of and against the Further Separate and Affirmative Defense of said defendants, wherein it is alleged that there was complete accord and satisfaction between E. T. Barnette and Isabelle Barnette and the former receivers of said Washington-Alaska Bank as to all the matters and things

charged in the Complaint herein, and that there was a full settlement between the parties and a release of said Barnette from all the matters and things charged against him in the Complaint by reason thereof, and also contains all the evidence, testimony and exhibits introduced and given upon the [57] trial of said cause in support of, and against, the Further Separate and Affirmative Defense of the defendants, wherein it is alleged that said E. T. Barnette and Isabelle Barnette had fully paid and satisfied all of the wrongs and things alleged and charged against these defendants in the Complaint herein; as well as all of the proceedings not of record; and is in all respects true and correct.

Now, therefore, on motion,

IT IS HEREBY ORDERED: That the foregoing be, and the same is hereby, approved, allowed and settled as the Bill of Exceptions in the above-entitled cause, and made a part of the record herein; and that the same has been filed and presented within the time allowed by the orders of this Court.

AND IT IS FURTHER ORDERED: That the testimony and evidence introduced and received in said cause of F. G. Noyes, as receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson et al., Defendants, number 1756, and which said testimony and evidence is set forth in the Bill of Exceptions filed, settled and allowed in said cause number 1756, need not be set forth in the foregoing Bill of Exceptions in this cause, but that the same is by reference, upon stipulation of the at-

torneys for the respective parties, incorporated in and made a part of this Bill of Exceptions.

Done at Fairbanks, Alaska, this 19th day of September, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 13, page 22.

[Endorsed]: No. 1761. District Court, 4 Division, Territory of Alaska. F. G. Noyes, as Receiver, vs. John Zug et al. Bill of Exceptions.

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [58]

[Title of Court and Cause.]

Assignments of Error.

Come now the above-named defendants John A. Jesson, R. C. Wood and John L. McGinn, and file the following assignments of error upon which they will rely on their appeal from the decree made by this Honorable Court upon the 6th day of July, 1914, in the above-entitled cause:

I.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 2 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That at the time said dividend was declared and paid, the said Fairbanks Banking Company had undivided profits amounting to said sum of \$33,720.00 and said dividend was declared and

paid out of the undivided profits of said bank. [59]

2.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 4 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows;

That the end of the fiscal year of the Washington-Alaska Bank and of the Fairbanks Banking Company was the 31st day of December of each year, and at said time it had been the custom and practice of said Washington-Alaska Bank and said Fairbanks Banking Company to charge off all debts due said banks that in the judgment of their officers was bad and uncollectible and which had not been charged off during said fiscal year.

3.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 5 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said bad debts due to the bank and so charged off were not after said time carried as an asset of said bank; and, after said bad debts had been deducted from the assets, any profits that were shown to exist, after the deduction of all liabilities including outstanding stock, were placed in the undivided profit account, and were so carried until the end of the next fiscal year unless a dividend was declared upon the same or bad debts charged against the same during the

next succeeding fiscal year. [60]

4.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 6 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That at the end of the fiscal year of 1909, R. C. Wood, who was then the president and manager of the First National Bank, and also acting as advisory manager of said Washington-Alaska Bank and Fairbanks Banking Company, requested George Wesch, then cashier of the Washington-Alaska Bank, to make a list of loans and discounts of said bank that he considered bad and uncollectible.

That said Wesch thereupon prepared a list of all the said loans and discounts due said bank that he considered bad and uncollectible, and presented the same to said R. C. Wood and thereupon the said Wood and Wesch went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of \$8,599.59.

That said loans and discounts due said bank were then and there, to wit, on December 31st, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still remained undivided profits for the fiscal year ending December 31st, 1909, amounting to the sum of \$56,106.97.

5.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 7 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the said George Wesch was and is a man of high standing in this community, a banker of experience, capable and honest, and well acquainted with the securities of said bank and the standing of its debtors.

6.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 8 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the said R. C. Wood was a man of high standing in the community, the president of the First National Bank, a banker of experience, and well acquainted with the condition of said Washington-Alaska Bank, and the securities held by it for loans made by, and due to, said bank.

7.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 9 of the defendants' proposed Findings of Fact [61] and Conclusions of Law, and which is as follows:

That the said R. C. Wood, immediately after his appointment as advisory manager of said banks, prepared a record of all the loans and discounts of said Washington-Alaska Bank and said Fairbanks Banking Company, which said

record contained the names of the debtors, the amounts due the said Washington-Alaska Bank and Fairbanks Banking Company, and a description and the location of all property, real and personal, given to secure the loans made by said bank, which said record ever since the month of May, 1910, has been a record of said Fairbanks Banking Company, and is now in the possession of the receiver thereof.

8.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 10 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said record book so containing the names of the debtors of said Washington-Alaska Bank and the Fairbanks Banking Company, and a description and location of the properties given to secure said debts, although in the possession of the present receiver from the date of his appointment, was never examined by him, and the securities mentioned and described in said book given to secure loans were not known by him to be in existence.

9.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 11 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That at the end of the fiscal year 1909, the said R. C. Wood requested J. A. Jackson, cashier of the Fairbanks Banking Company, to make out

a list of loans and discounts of said Fairbanks Banking Company that he considered bad and uncollectible. That said Jackson thereupon prepared a list of all said loans and discounts that he considered bad and uncollectible and presented the same to said R. C. Wood, and thereupon the said Wood and Jackson went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of \$24,937.37.

That said loans and discounts due said bank were then and there, to wit, on December 31st, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were charged off, there still remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of \$9,881.78. [62]

10.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 12 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the said J. A. Jackson was and is a man of high standing in the community, a banker of experience, capable and honest, and well acquainted with the securities of said bank and the standing of its debtors.

11.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 12 of the defendants'

proposed Findings of Fact and Conclusions of Law, and which is as follows :

That at the meeting of the board of directors of said Fairbanks Banking Company held on January 12, 1910, statements of the condition of the said Washington-Alaska Bank of Washington and the Fairbanks Banking Company as of date December 31, 1909, after said bad debts hereinbefore mentioned had been charged off, were presented by the officers of said banks to said board of directors; and, after the same had been discussed and examined by said directors, the same were ordered filed. That said statements showed that the undivided profits of the Washington-Alaska Bank for the year ending December 31, 1909, after deducting what the officers of said bank regarded to be all of its bad loans and discounts, was the sum of \$56,106.97. That said statement showed that the undivided profits of the Fairbanks Banking Company for the year ending December 31, 1909, after deducting all the bad debts, was the sum of \$9,881.78.

12.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 14 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows :

That upon the 12th day of April, 1910, the directors of the Washington-Alaska Bank declared a dividend of \$50,000.

13.

The Court erred in refusing to make the Finding

of Fact set forth in paragraph 15 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said dividend of the Washington-Alaska Bank of Washington, to wit, \$50,000, was paid to its stockholder the Fairbanks [63] Banking Company, \$25,000 of which said sum was ordered by the directors to be placed to the credit of the undivided profit account of said Fairbanks Banking Company, and the other \$25,000 was directed to be credited on the account for which said Fairbanks Banking Company was carrying the stock of said Washington-Alaska Bank.

14.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 16 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That after said sum of \$25,000 had been added to said undivided profit account of said Fairbanks Banking Company, the undivided profit account of said bank at said time amounted to the sum of \$34,828.55.

15.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 17 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That at the time of the declaration of said dividend, and after the adding of said sum of \$25,000 to the undivided profit account, the

books of said company showed that the undivided profit account amounted to the sum of \$34,828.55, and the directors at said time honestly and in good faith believed that the undivided profits of said Fairbanks Banking Company was said sum of \$34,828.55, and said directors were so advised by the officers of said bank.

16.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 18 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the profit of said Washington-Alaska Bank and Fairbanks Banking Company and First National Bank, for the year ending December 31, 1909, was the sum of \$131,332.91; and, after charging off bad debts on said three banks to the amount of \$42,836.96, the net profits of said three banks for said year was \$88,495.95.

17.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 19 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows: [64]

That the said Fairbanks Banking Company, at the time of the declaration of the dividend was carrying the stock of the Gold Bar Lumber Company for the sum of \$341,949, and said directors in good faith believed, and, from the reports of the officers of said Gold Bar Lumber Company, as well as from the reports of people of high standing who were acquainted with said

property and the value thereof, had a right to believe, that said property was worth said amount.

18.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 20 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the advancements made to the Tanana Electric Company by the Fairbanks Banking Company, for which two notes of the Tanana Electric Company were given to said bank amounting to the sum of \$27,997.38, were authorized and directed by the Scandinavian-American Bank of Seattle, State of Washington, and the said directors, at the time of the declaration of said dividend, believed and had a right to believe that the same was a good and valid claim against the said Scandinavian-American Bank, and a valuable asset of said Fairbanks Banking Company to the amount that the same was carried by them.

19.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 21 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said dividend was declared by said directors of said bank in good faith and in the honest belief, and after the exercise of due care, that the undivided profits of said bank amounted to the sum of \$34,828.55, and that the values

placed upon the assets of said bank was the true and correct one, and that the amount for which said bank was carrying its assets, and particularly its stocks, loans and discounts, were the true and correct valuation of the same.

20.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 22 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the dividend so paid to the stockholders, and which was received by the defendants answering in this case, was received by them without knowledge on their part that said bank did not have any surplus or undivided profits out of which said dividend could be declared or paid, or that the same was paid out of the capital of said bank; and they [65] and each of them received the same in good faith and in the honest belief that the same was declared and paid to them out of the surplus and undivided profits of said bank.

21.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 26 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That in the month of March, 1911, the then receivers of the Washington-Alaska Bank, formerly Fairbanks Banking Company, [66] intended to bring a suit or action in the District Court for the Territory of Alaska, Fourth Ju-

dicial Division, against E. T. Barnette, who had been the president of said Fairbanks Banking Company, and a director thereof, from the time of its organization as a corporation on March 12, 1908, until it closed its doors on January 4, 1911, and as such was active and influential in the management and control of said Fairbanks Banking Company.

22.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 27 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That at the time of the suspension of said bank, said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said Washington-Alaska Bank, and with the then receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against the said E. T. Barnette on account of his liability to the creditors of said bank on account of his management thereof from the time of its organization on the 12th day of March, 1908, until the 4th day of January, 1911.

23.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 28 of the defendants' proposed Findings of Fact and Conclusions of Law,

and which is as follows:

That as a result of said negotiations, and in full satisfaction of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank for and on account of the acts and wrongs done by him, if any, during said time that he was president and director thereof, the said E. T. Barnette and Isabelle Barnette, his wife, executed an instrument in writing in which the said E. T. Barnette admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all of the depositors and holders of unpaid drafts of said bank in full any deficiency that might be found to exist upon the 18th day of December, 1914, between the amounts due said depositors and holders of unpaid drafts on the 4th day of January, 1911, with interest thereon at the rate of six per cent per annum from said 4th day of January, 1911, until the same should be paid, and the amount realized out of the property and assets of said Washington-Alaska Bank and paid to said depositors and holders of unpaid drafts. [67]

24.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 29 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said Isabelle Barnette was and is the wife of said E. T. Barnette, and the said Isabelle Barnette joined in said instrument in writing because of her desire to aid her said husband

in paying the creditors and depositors of said Washington-Alaska Bank.

25.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 30 of the defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the said promises were made on the distinct understanding and agreement that no litigation would be instituted against the said E. T. Barnette or any other person or persons jointly liable with him for any act or deed done by him during the time that he was president and director of said bank as aforesaid; and that, for the purpose of preventing any litigation, and as security for the faithful performance of the promises made by said E. T. Barnette and Isabelle Barnette, the said E. T. Barnette and Isabelle Barnette on the 18th day of March, 1911, with the knowledge, consent and approval of this Court, conveyed to the receivers of said bank, and the said receivers, by order of this Court, accepted a conveyance of title to an improved plantation containing 18,723 acres of land situated in the Republic of Mexico, and certain improved and income producing business property and lots situated in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining claims situated in the Fairbanks Precinct, Territory of Alaska; all of which property belonged, at the time of said

conveyances, to said E. T. Barnette and Isabelle Barnette, and were and are worth the sum of \$500,000, a sum greatly in excess of all the unpaid debts and liabilities of said bank.

26.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 31 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That in said deed of property situated in the Republic of Mexico, as well as in the deed to property situated in Alaska, it is expressly provided that if the depositors and holders of unpaid drafts are not paid in full by the 18th day of November, 1914, either out of the property and assets of said Washington-Alaska Bank, or otherwise, or by [68] the said E. T. Barnette and Isabelle Barnette, said receivers may sell all or any part of said land at private sale for the best possible prices obtainable; and that the moneys and funds derived from the sale of said properties shall then be paid to the depositors and owners of unpaid drafts in an amount sufficient to pay their claims and demands in full; and that, if the proceeds derived from the assets of said bank and the amounts realized from the sale of said properties shall be insufficient to pay said depositors and owners of unpaid drafts in full, then the same is to be disbursed amongst said depositors and owners of unpaid drafts pro rata; and that if the amount derived from the sale of said property shall exceed the amount

sufficient to satisfy said amounts in full, with interest as above set forth, then the balance is to be returned to said E. T. Barnette and Isabelle Barnette.

And it is further provided in said deeds that if, after applying the moneys received from the property and assets of said Washington-Alaska Bank and the sale of said properties mentioned in said deeds, and any moneys obtained from George Edgar Ward and W. B. Biggs on account of an option given to them upon the 18th day of November, 1909, to purchase an undivided 49/100 interest in and to said Mexican property for the sum of approximately \$225,000.00 there shall still remain a balance due said depositors and holders of unpaid drafts, the said E. T. Barnette and Isabelle Barnette promise and agree to pay said balance in full.

27.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 32 of defendant's proposed Findings of Fact and Conclusions of Law, and which is as follows:

That in said deed of the property situate in the Territory of Alaska, the receivers and their successors are authorized and empowered to take possession of the same and to receive and collect the rents, royalties and issues thereof, and disburse the same to the depositors and holders of unpaid drafts, under the orders of this Court and that, in the event the said E. T. Barnette

and Isabelle Barnette and the said receivers or their successors shall deem it at any time advisable to sell any of said real estate situate in Alaska, that the same may be done by said receivers, and the proceeds derived from such sale disbursed to the depositors and holders of unpaid drafts, under the order of this Court.

28.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 33 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the said receiver, plaintiff herein, holds a large amount of property belonging to said bank, which is of great value [69] and has not been converted into money, and said property so held by him, and the property so conveyed to the receivers by said E. T. Barnette and Isabelle Barnette are more than sufficient to satisfy all the claims, demands and obligations of creditors of said Washington-Alaska Bank.

29.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 34 of defendants' proposed Finds of Fact and Conclusions of Law, and which is as follows:

That on the 29th day of March, 1911, the then receivers of the Washington-Alaska Bank agreed to accept in full satisfaction of the liability of said E. T. Barnette to the creditors of said Washington-Alaska Bank the said deeds of said property upon the terms and conditions thereof

and the said promises of the said E. T. Barnette and Isabelle Barnette therein, and the said E. T. Barnette and Isabelle Barnett made, executed and delivered said deeds and made the said promises contained therein upon the direct understanding and agreement that the same were in full satisfaction of all suits or causes of action then existing against said E. T. Barnette on account of any and all matters and things arising from his connection or management of the affairs of the said Fairbanks Banking Company, afterwards known as Washington-Alaska Bank, and in full satisfaction of all liability of the said E. T. Barnette to the creditors of said Washington-Alaska Bank; and that said receivers accepted and received said promises and said deeds to said property upon order of this Court in full satisfaction of all claims and causes of action of whatsoever nature that existed against the said E. T. Barnette for and on account of his management of the affairs of said bank from the 12th day of March, 1908, to the 4th day of January, 1911, and for and on account of his acts as president and as a director of said corporation.

30.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 35 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the receivers of said Washington-Alaska Bank, before the delivery and acceptance of said

deeds hereinbefore mentioned, intended to, and if said agreement and deeds had not been made, executed and delivered to said receivers as hereinbefore stated, would have instituted an action against said E. T. Barnette to recover from said E. T. Barnette the amount of the dividend which was declared by said Fairbanks Banking Company upon the 12th day of March, 1910, and which in the complaint in this action, in paragraph 4 thereof, is alleged to have been declared wrongfully and fraudulently. [70]

31.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 36 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the promises of said E. T. Barnette and Isabelle Barnette and the deeds to the property hereinbefore mentioned were given by the said E. T. Barnette and Isabelle Barnette upon the express understanding and agreement that the same were in full satisfaction of any liability of the said E. T. Barnette on account of the declaration of said dividend and in discharge of any causes of action against him for and on account thereof, and the same were accepted by the said receivers of said bank upon the distinct understanding that the same were in full satisfaction of the liability of the said E. T. Barnette to the creditors of said bank on account of the declaration of said dividend, and in full discharge of the said E. T. Barnette on any causes of action

that might arise therefrom.

32.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 37 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the receivers have received from the rents, royalties and issue of the property situate in the Territory of Alaska, the sum of \$31,400;

That the value of the property situate in the Town of Fairbanks, Alaska, is the sum of \$25,000;

That the value of the mining property situate in the Fairbanks Recording District, Alaska, is the sum of \$20,000;

That the value of the Mexican property cannot be definitely determined at this time, but the same is of great value, and was, at the time of the execution of said deed, of the value of \$500,000.

33.

The Court erred in refusing to make the Finding of Fact set forth in paragraph 38 of defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the moneys received by the receivers from said properties and the value of the property conveyed by the said E. T. Barnette and Isabelle Barnette to the receivers as hereinbefore stated is more than ample to satisfy in full all of the liability of the said E. T. Barnette and the directors and officers of said bank to said corporation for

and on account of any acts, deeds or wrongs done by them as such officers and directors, or otherwise. [71]

34.

The Court erred in refusing to make and find as a conclusion of law what is set forth in paragraph 1 of Conclusions of Law in defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said dividend was declared and paid out of the undivided profits of the Fairbanks Banking Company.

35.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 2 of Conclusions of Law in defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That said defendants received said dividend honestly and in good faith believing that the same was declared and paid out of the undivided profits of said Fairbanks Banking Company, and they had no knowledge or notice that the same or any part thereof was declared and paid out of its capital stock.

36.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 3 of Conclusions of Law in defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That there was a complete accord and satis-

faction, as to all of the matters and things set forth in the complaint herein, had between E. T. Barnette and Isabelle Barnette and the former receivers of said Washington-Alaska Bank, and that by reason thereof all the matters and things charged in said complaint have been fully paid and satisfied.

37.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 4 of Conclusions of Law in defendants' proposed Findings of Fact and Conclusions of Law, and which is as follows:

That the defendants are entitled to a judgment and decree that the plaintiff recover nothing by this action and that they have judgment for their costs and disbursements. [72]

38.

The Court erred in overruling defendants' objection to that portion of paragraph 5 of the Findings of Fact signed and filed in this cause, and in making the same, wherein it is stated that the said Wood was at said time the owner of shares of the capital stock of said company of the par value of \$2500.00, and that there was paid to him thereon on said dividend the sum of \$500.

39.

The Court erred in overruling the defendants' objection to Finding of Fact number 6, for the reason that the same is contrary to the evidence given upon the trial of said cause, and is not supported by any evidence.

40.

The Court erred in overruling the defendants' objection to that portion of Finding of Fact number 6, wherein it is stated that the fact that said dividend was paid out of the capital stock of said bank was known to defendants McGinn, Wood and J. A. Jesson, and each of them, at said time, or should have been known to them by the exercise of reasonable diligence.

41.

The Court erred in overruling the defendants' objection to that portion of Finding of Fact number 9, wherein it is stated that the amount of said liability is more than \$470,000.00 in excess of the value of said assets.

42.

The Court erred in overruling the defendants' objection to the Conclusion of Law number 1 of the Conclusions of Law signed and filed in this cause, and in making the same, which is as follows:

That the defendant J. A. Jesson is liable to plaintiff by reason of the payment to him of said dividend in the sum of \$2,000 [73]

43.

The Court erred in overruling the defendants' objection to Conclusion of Law number 2 of the Conclusions of Law signed and filed in this cause, and in making the same, which is as follows:

That the defendant John L. McGinn is liable to plaintiff, by reason of the payment to him of said dividend, in the sum of \$2,000.

44.

The Court erred in overruling the defendants' objection to Conclusion of Law number 3 of the Conclusions of Law signed and filed in this cause, and in making the same, which is as follows :

That the defendant R. C. Wood is liable to plaintiff, by reason of the payment to him of said dividend, in the sum of \$500.

45.

The Court erred in ordering and directing that a decree be entered in accordance with said Conclusions of Law.

46.

The Court erred in entering judgment and decree in favor of the plaintiff and against the defendants John A. Jesson for the sum of \$2,000.

47.

The Court erred in entering judgment and decree in favor of the plaintiff and against the defendant John L. McGinn for the sum of \$2,000.

48.

The Court erred in entering judgment and decree in favor of the plaintiff and against the defendant R. C. Wood for the sum of \$500.

49.

The Court erred in ordering and adjudging that the plaintiff have and recover costs from the defendants John A. Jesson, John L. McGinn and R. C. Wood. [74]

50.

The Court erred in making, rendering and entering a decree to the effect that execution issue for the

enforcement of the above judgment and decree against the defendants R. C. Wood, J. A. Jesson and John L. McGinn.

51.

The Court erred in making, rendering and entering a decree in favor of the defendants J. A. Jesson, R. C. Wood and John L. McGinn, and against the plaintiff, to the effect that plaintiff take nothing in this action, and that the defendants recover their costs and disbursements.

52.

The Court erred in refusing to make a finding that all the matters and things charged in the complaint were fully compromised and settled by the accord and satisfaction that was entered into between E. T. Barnette and Isabelle Barnette and the former receivers of said corporation.

53.

The Court erred in failing to make a Finding of Fact to the effect that all the wrongs charged in the complaint have been fully paid and satisfied by the said E. T. Barnette and Isabelle Barnette.

54.

The Court erred in failing to make a Finding of Fact to the effect that all the matters and things found against these defendants have been fully paid and satisfied by the said E. T. Barnette and Isabelle Barnette.

WHEREFORE, these defendants pray that the judgment and decree of said Court be vacated and set aside, and that judgment and decree be entered in favor of the defendants to the effect that the plain-

tiff recover nothing in this action and that said [75] defendants do recover their costs and disbursements, and that they have such other and further relief as in accordance with the law they are entitled to receive.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. MCGINN,

Attorneys for Defendants J. A. Jesson, R. C. Wood
and John L. McGinn.

Service of a true copy of the within Assignments of Error at Fairbanks, Alaska, September 19th, 1914, is hereby admitted.

R. F. ROTH,
Attorney for Plaintiff.

[Endorsed]: 1761. District Court, 4 Division, Territory of Alaska, F. G. Noyes, as Receiver, vs John Zug et al. Assignments of Error.

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [76]

[Title of Court and Cause.]

**Petition for the Allowance of Appeal and Order
Allowing the Same.**

The above-named defendants R. C. Wood, John L. McGinn and J. A. Jesson, conceiving themselves aggrieved by the order, judgment and decree made and entered in the above-entitled court and cause on the 6th day of July, 1914, wherein it was adjudged and decreed that the plaintiff have and recover of

and from the defendant J. A. Jesson the sum of two thousand dollars; that the plaintiff have and recover of and from the defendant R. C. Wood the sum of Five Hundred Dollars, and that the plaintiff have and recover of and from the defendant John L. McGinn the sum of Two Thousand Dollars; and that the plaintiff have and recover costs from the defendants R. C. Wood, John L. McGinn and J. A. Jesson; and that execution issue for the enforcement of said judgment, do hereby appeal from said order, judgment and decree made and entered on the 6th day of July, 1914, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons [77] specified in the Assignment of Errors filed herein; and they pray that this appeal may be allowed, and that the transcript of the record, papers and proceedings upon which said judgment and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and they pray that the Court fix the amount of the security which the defendant R. C. Wood shall give and furnish upon such appeal and that upon the giving of such security all further proceedings in this court be suspended and stayed as against the said R. C. Wood until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit; and that the Court also make an order fixing the amount of security which the defendant John L. McGinn shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this court as to him be suspended and stayed until the deter-

mination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit; and that the Court fix the amount of the cost bond on appeal.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. MCGINN,

Attorneys for Defendants R. C. Wood, John L. McGinn and J. A. Jesson.

Service of the foregoing petition for allowance of appeal is hereby admitted at Fairbanks, Alaska, this 19th day of September, 1914, by receipt of a copy thereof.

R. F. ROTH,
Attorney for Plaintiff.

The foregoing petition for appeal is hereby granted.

Done at Fairbanks, Alaska, this 19th day of September, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 13, page 23. [78]

We hereby certify that the foregoing is a full and true copy of the petition for the allowance of an appeal herein.

McGOWAN & CLARK,
A. R. HEILIG and
JOHN L. MCGINN,

Attorneys for Defendants Wood, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [79]

At a stated term, to wit, the regular October 1913 term, of the District Court of the Territory of Alaska, Fourth Judicial Division, held at the courtroom in the Town of Fairbanks, Territory of Alaska, in said Fourth Division. on the 19th day of September, 1914. Present, the Honorable F. E. FULLER, Judge of the District Court of the Territory of Alaska, Fourth Division, sitting in equity.

[Title of Cause.]

Order Allowing Appeal [and Fixing Amount of Bond].

On motion of Messrs. McGowan & Clark, A. R. Heilig and John L. McGinn, attorneys for defendants R. C. Wood, John L. McGinn and J. A. Jesson,

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore filed and entered herein against the defendants R. C. Wood, John L. McGinn and J. A. Jesson, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals. [80]

IT IS FURTHER ORDERED that the bond on appeal as to the defendant R. C. Wood be fixed at the sum of one thousand dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal; and that as to the defendant John L. McGinn the bond on appeal be fixed at the sum of three thousand dollars, the same to act as a

supersedeas bond and also as a bond for costs and damages on appeal; and that as to the other defendant the cost bond on appeal be fixed at the sum of five hundred dollars, the same to be included in the amount of bond that is to be given by the said defendants Wood and McGinn.

Dated at Fairbanks, Alaska, this 19th day of September, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 13, page 23.

Service of the within order allowing appeal, by receipt of a true copy thereof at Fairbanks, Alaska, September 19th, 1914, is hereby admitted.

R. F. ROTH,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [81]

[Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That I, John L. McGinn, as principal, and E. W. Griffin and W. Casey, as sureties, are held and firmly bound unto F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, the plaintiff herein, in the full sum of three thousand dollars, to be paid to the said F. G. Noyes, as receiver of the said Washington-Alaska Bank, a corporation, plaintiff herein, his attorneys, executors, administrators, assigns, successor or successors, to which payment well

and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of September, A. D. 1914.

WHEREAS lately at a term of the District Court for the Territory of Alaska, Fourth Division, in a suit pending in said Court between F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, as plaintiff, and John Zug, Jas. W. Hill, John L. McGinn, [82] Dave Yarnell, David Petree, L. T. Erwin, R. C. Wood, G. A. Coleman, Jesson Brothers, a copartnership composed of L. N. Jesson, J. A. Jesson and E. R. Jesson, also L. N. Jesson, J. A. Jesson, and E. R. Jesson as individuals, J. L. Sale, A. T. Smith, J. A. Healey, G. W. Palmer, Mrs. Mary Anderson, Margaret Hally, S. Dockham, M. F. Hall, Violet Gaustad, Mrs. Anna C. Sullivan, John P. Anderson, John E. Holmgren, John Flygar, B. R. Dusenbury, Annie B. Claypool, S. E. & Robert Shephard, copartners doing business as Shephard Brothers, H. C. C. Baldry, John Parsons, Lucy Parsons, W. E. Baldry, Chas. Frey, Paul Fisher, Hans Stark, Geo. Preston, Dan Ryan, Susie Kotsch, and Clara Marks, as defendants, a decree was rendered against the defendant, John L. McGinn, for the sum of two thousand dollars and costs; and defendants J. A. Jesson, R. C. Wood and John L. McGinn have obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation

directed to said plaintiff F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, is about to be issued citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden in San Francisco, California;

AND WHEREAS the above-named defendant John L. McGinn has obtained an order from said Court that the bond on appeal as to him be fixed in the sum of Three Thousand Dollars, the same to act as a supersedeas bond as to him, and also as a bond for costs and damages on appeal.

Now, the condition of the above obligation is such that if the said John L. McGinn shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him, if he fails to make his plea good, then this [83] obligation is to be void; otherwise to remain in full force and virtue.

JOHN L. MCGINN,
Principal.

E. W. GRIFFIN,
Surety.

W. CASEY.
Surety.

United States of America,
Territory of Alaska,—ss.

E. W. Griffin and William Casey, whose names are subscribed to the above and foregoing undertaking as sureties, being first duly sworn, each for himself doth depose and say: That he is a resident of the Territory of Alaska; That he is not an attorney or

counsellor at law, marshal, clerk of any court, or other officer of any court; That he is worth the sum of Three Thousand Dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

E. W. GRIFFIN.

W. CASEY.

Subscribed and sworn to before me this 19 day of September, 1914.

[Seal]

E. T. WOLCOTT,

A Notary Public for Territory of Alaska.

My Commission will expire May 10, 1917.

The sufficiency of the sureties on the foregoing bond approved this 19th day of September, 1914.

F. E. FULLER,

District Judge.

[Endorsed]: No. 1761. District Court, 4 Div. Alaska. F. G. Noyes, as Receiver, vs. John Zug, et al. Bond on Appeal (John L. McGinn).

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [84]

[Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That I, R. C. Wood as principal, and George Hutchinson and E. R. Peoples, as sureties, are held and firmly bound unto F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, the plaintiff herein, in the full sum of one thousand dollars, to be paid to the said F. G. Noyes, as receiver of the

said Washington-Alaska Bank, a corporation, plaintiff herein, his attorneys, executors, administrators, assigns, successor or successors, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of September, A. D. 1914.

WHEREAS lately at a term of the District Court for the Territory of Alaska, Fourth Division, in a suit pending in said Court between F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, as plaintiff, and John Zug, Jas. W. Hill, John L. McGinn, [85] Dave Yarnell, David Petree, L. T. Erwin, R. C. Wood, G. A. Coleman, Jesson Brothers, a copartnership composed of L. N. Jesson, J. A. Jesson and E. R. Jesson, also L. N. Jesson, J. A. Jesson, and E. R. Jesson as individuals, J. L. Sale, A. T. Smith, J. A. Healey, G. W. Palmer, Mrs. Mary Anderson, Margaret Hally, S. Dockham, M. F. Hall, Violet Gaustad, Mrs. Anna C. Sullivan, John P. Anderson, John E. Holmgren, John Flygar, B. R. Dusenbury, Annie B. Claypool, S. E. & Robert Shephard, copartners doing business as Shephard Brothers, H. C. C. Baldry, John Parsons, Lucy Parsons, W. E. Baldry, Chas. Frey, Paul Fisher, Hans Stark, Geo. Preston, Dan Ryan, Susie Kotsch, and Clara Marks, as defendants, a decree was rendered against the defendant R. C. Wood, for the sum of five hundred dollars and costs; and defendants J. A. Jesson, R. C. Wood and John L. McGinn have ob-

tained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation directed to said plaintiff F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, is about to be issued citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden in San Francisco, California;

AND WHEREAS, the above-named defendant R. C. Wood has obtained an order from said Court that the bond on appeal as to him be fixed in the sum of One Thousand Dollars, the same to act as a superseas bond as to him, and also as a bond for costs and damages on appeal.

Now, the condition of the above obligation is such that if the said R. C. Wood shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him, if he fails to make his plea good, then this [86] obligation is to be void; otherwise to remain in full force and virtue.

R. C. WOOD,
By J. L. McGINN, Attorney,
Principal.
GEO. HUTCHINSON,
Surety.
E. R. PEOPLES,
Surety.

United States of America,
Territory of Alaska,—ss.

George Hutchinson and E. R. Peoples, whose

names are subscribed to the above and foregoing undertaking as sureties, being first duly sworn, each for himself doth depose and say: That he is a resident of the Territory of Alaska; that he is not an attorney or counsellor at law, marshal, clerk of any court, or other officer of any court; that he is worth the sum of Two Thousand Dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

GEO. HUTCHINSON,
E. R. PEOPLES.

Subscribed and sworn to before me this 19 day of September, 1914.

[Seal]

E. T. WOLCOTT,

A Notary Public for Territory of Alaska.

My Commission will expire May 10, 1917.

The sufficiency of the sureties on the foregoing bond approved this 19th day of September, 1914.

F. E. FULLER,

District Judge.

[Endorsed]: No. 1761. District Court, 4 Div. Alaska. F. G. Noyes, Receiver, vs. John Zug et al. Bond on Appeal. (R. C. Wood.)

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [87]

[Title of Court and Cause.]

Citation [on Appeal].

United States of America,

Territory of Alaska,—ss.

The President of the United States of America. To

F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff:

YOU ARE HEREBY CITED AND ADMONISHED to appear and be at the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal, made and entered in the above-entitled cause in which F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, is plaintiff and respondent, and John Zug, Jas. W. Hill, John L. McGinn, Dave Yarnell, David Petree, L. T. Erwin, R. C. Wood, G. A. Coleman, Jesson Brothers, a copartnership composed of L. N. Jesson J. A. Jesson and E. R. Jesson, also L. N. Jesson, J. A. Jesson and E. R. Jesson, as individuals, J. L. Sale, A. T. Smith, J. A. Healey, G. W. Palmer, Mrs. Mary Anderson, [88] Margaret Hally, S. Dockman, M. F. Hall, Violet Gausted, Mrs. Annie C. Sullivan, John P. Anderson, John E. Holmgren, John Flygar, B. R. Dusenbury, Annie B. Claypool, S. E. & Robert Shephard, copartners doing business as Shephard Brothers, H. C. C. Baldry, John Parsons, Lucy Parsons, W. E. Baldry, Chas. Frey, Paul Fisher, Hans Stark, Geo. Preston, Dan Ryan, Susie Kotzeh and Clara Marks are defendants, and said defendants R. C. Wood, John L. McGinn

and J. A. Jesson are appellants in said appeal, to show cause, if any there be, why a decree and judgment rendered in said cause in said District Court for the Territory of Alaska, Fourth Division, against the defendants R. C. Wood, John L. McGinn and J. A. Jesson, and each of them, should not be set aside, corrected and reversed, and why speedy justice should not be done to the defendants R. C. Wood, John L. McGinn and J. A. Jesson.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this 19th day of September, one thousand nine hundred and fourteen.

F. E. FULLER,
District Judge in and for the Territory of Alaska,
Fourth Judicial Division.

[Seal] Attest: ANGUS McBRIDE,
Clerk.

Service of a copy of the within and foregoing Citation admitted this 19 day of September, 1914, at Fairbanks, Alaska.

R. F. ROTH,
Attorney for Plaintiff and Respondent. [89]

[Title of Court and Cause.]

Stipulation Extending Return Day.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys herein that, owing to the great distance between Fairbanks, Alaska, and San Francisco, California, and the uncertainty of mail, that the time for docketing this appeal be, and the same is hereby, extended to and

including the 1st day of January, 1915.

Dated Fairbanks, Alaska, September 19th, 1914.

R. F. ROTH,

Attorney for Plaintiff.

McGOWAN & CLARK,

A. R. HEILIG, and

JOHN L. MCGINN,

Attorneys for Defendants Wood, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [90]

[Title of Court and Cause.]

Order Extending Return Day.

It having been stipulated and agreed by and between the parties hereto through their respective attorneys that the return day and the time for docketing the appeal in this action may be extended to and including the 1st day of January, 1915, on account of the great distance of Fairbanks, Alaska, from San Francisco, California, and the uncertainty of mail.

Now, therefore, it is hereby

ORDERED that the return day and the time for docketing said cause be extended to and including the 1st day of January, 1915.

Dated at Fairbanks, Alaska, this 19th day of September, 1914.

F. E. FULLER,

District Judge.

Entered in Court Journal No. 13, page 23.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [91]

[Title of Court and Cause.]

[**Stipulation re Transcript of Record on Appeal.**]

IT IS HEREBY STIPULATED between the plaintiff and the defendants Wood, McGinn and J. A. Jesson et al., by and through their respective attorneys, that the transcript of record on appeal in the above-entitled cause shall be made up of the following papers;

Complaint;

Amended Answer of J. A. Jesson, John L. McGinn and R. C. Wood;

Reply to said Answer;

Findings of Fact and Conclusions of Law;

Judgment and Decree;

Bill of Exceptions;

Order Settling Bill of Exceptions;

Assignments of Error;

Petition for Appeal;

Order Allowing Appeal;

Bonds on Appeal;

Citation, and Admission of Service Thereon;

Stipulation Extending the Return Day and Time for Docketing said Cause on Appeal;

Order Extending Return Day and Time for Docketing said cause on Appeal;

Stipulation for Printing of Transcript;

Stipulation as to Record on Appeal;

Praecipe for Transcript; and [92]

This Stipulation as to Making up or Record.

Done at Fairbanks, Alaska, September 19, 1914.

R. F. ROTH,

Attorney for Plaintiff.

McGOWAN & CLARK,

A. R. HEILIG,

JOHN L. McGINN,

Attorneys for Defendants Wood, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [93]

[Title of Court and Cause.]

Stipulation as to Record on Appeal.

It is hereby stipulated and agreed by and between the attorneys for the plaintiff and defendants, that the Bill of Exceptions contained in the transcript on appeal in the case of F. G. Noyes, Receiver, etc., vs. J. A. Jesson, et al., No. 1756, may be used as the Bill of Exceptions on Appeal in this cause without the necessity of printing the same separately;

And it is further stipulated and agreed that this cause may be submitted to the Circuit Court of Appeals for the Ninth Circuit upon said Bill of Exceptions at the same time that said cause No. 1766 is submitted to said Court.

Dated at Iditarod, Alaska, this 6th day of July, 1914.

O. L. RIDER,

Attorney for Plaintiff.

McGOWAN & CLARK,

JOHN L. McGINN,

Attorney for Wood, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [94]

[Title of Court and Cause.]

Stipulation as to Printing of the Record.

IT IS HEREBY STIPULATED AND AGREED that in the printing of the record herein for the consideration of the Court on appeal that the title of the court and cause in full on all of the pages shall be omitted except on the first page, and inserted in lieu thereof "Title of Court and Cause."

Dated, Fairbanks, Alaska, September 19, 1914.

R. F. ROTH,

Attorney for Plaintiff.

McGOWAN & CLARK,

A. R. HEILIG and

JOHN L. McGINN,

Attorneys for Defendants, Wood, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [95]

[**Certificate of Clerk U. S. District Court to
Transcript of Record.**]

*In the District Court for the Territory of Alaska, 4th
Division.*

No. 1761.

F. G. NOYES, as Receiver, etc.,

Plaintiff,

vs.

JOHN ZUG et al.,

Defendants.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Angus McBride, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of ninety-five (95) typewritten pages, numbered from 1 to 95 inclusive, constitutes a full, true and correct transcript on appeal in cause No. 1761, entitled: F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation, organized under the laws of the State of Nevada, Plaintiff, vs. John Zug, Jas. W. Hill, John L. McGinn, Dave Yarnell, David Petree, L. T. Erwin, R. C. Wood, G. A. Coleman, Jesson Brothers, a copartnership composed of L. N. Jesson, J. A. Jesson, and E. R. Jesson, also L. N. Jesson, J. A. Jesson and E. R. Jesson, as individuals, J. L. Sale, A. T. Smith, J. A. Healy, G. W. Palmer, Mrs Mary Anderson, Margaret Hally, S. Dockham, M. F. Hall, Violet Gaustad, Mrs. Anna C. Sullivan, John P. Anderson,

John E. Holmgren, John Flygar, B. R. Dusenbury, Annie B. Claypool, S. E. & Robert Shephard, copartners doing business as Shephard Bros., H. G. C. Baldry, John Parsons, Lucy Parsons, W. E. Baldry, Chas. Frey, Paul Fisher, Hans Stark, Geo. Preston, Dan Ryan, Susie Kotzch and Clara Marks, Defendants, wherein F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation, is Plaintiff and Appellee, and John Zug, Jas. W. Hill, John L. McGinn, Dave Yarnell, David Petree, L. T. Erwin, R. C. Wood, G. A. Coleman, Jesson Brothers, a copartnership composed of L. N. Jesson, J. A. Jesson, and E. R. Jesson, also L. N. [96] Jesson, J. A. Jesson and E. R. Jesson, as individuals, J. L. Sale, A. T. Smith, J. A. Healey, G. W. Palmer, Mrs. Mary Anderson, Margaret Hally, S Dockham, M. F. Hall, Violet Gaustad, Mrs. Anna C. Sullivan, John P. Anderson, John E. Holmgren, John Flygar, B. R. Dusenbury, Annie B. Claypool, S. E. & Robert Shephard, copartners doing business as Shephard Bros., H. G. C. Baldry, John Parsons, Lucy Parsons, W. E. Baldry, Chas. Frey, Paul Fisher, Hans Stark, Geo. Preston, Dan Ryan, Susie Kotzch and Clara Marks are defendants and appellants, and was made pursuant to and in accordance with the praecipe of the defendants and appellants filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith.

And I do further certify that the original Citation is included in said transcript, and that the index thereof, is a correct index of said transcript on ap-

peal; also that the costs of preparing said transcript and this certificate, amounting to thirty-seven and 50/100 dollars (\$37.50), have been paid to me by counsel for defendants and appellants.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court, at Fairbanks, Alaska, this 27th day of November, 1914.

[Seal] ANGUS McBRIDE,
Clerk District Court, Territory of Alaska, Fourth
Division. [97]

[Endorsed]: No. 2529. United States Circuit Court of Appeals for the Ninth Circuit. R. C. Wood, John L. McGinn and J. A. Jesson, Appellants, vs. F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation, Organized Under the Laws of the State of Nevada, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Received Dec. 15, 1914.

F. D. MONCKTON,
Clerk.

Filed Dec. 21, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk. [98]